

**STATE OF MARYLAND**  
**DEPARTMENT OF GENERAL SERVICES**  
**REQUEST FOR PROPOSAL (RFP)**

**FOR**  
**SOLICITATION NO. DGSS0264203**

**INDEFINITE DELIVERY CONTRACT (IDC)**

**TO PROVIDE PROJECT MANAGEMENT, ENERGY AUDIT, ENGINEERING, CONSTRUCTION,  
FINANCING, MAINTENANCE SERVICES AND MEASUREMENT & VERIFICATION TO DEVELOP  
AND IMPLEMENT COMPREHENSIVE ENERGY EFFICIENCY AND GUARANTEED SAVINGS  
PROGRAMS AT STATE FACILITIES**

**I.D. NO. DGS-06-EPC-IDC-6.0**

**Date: December 22, 2009**

**STATE OF MARYLAND**

**DEPARTMENT OF GENERAL SERVICES**

**Alvin Collins, Secretary  
State Office Building  
301 West Preston Street  
Baltimore, Maryland 21201**

**BOARD OF PUBLIC WORKS**

**Martin O'Malley, Governor  
Peter Franchot, Comptroller  
Nancy K. Kopp, Treasurer**

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- APPENDIX 6: Performance Evaluation Sheet

## **SECTION I – PROCUREMENT OBJECTIVE**

### **1. SUMMARY STATEMENT**

- A. The primary purpose of this solicitation is to select a qualified list of Energy Service Companies (ESCOs) who have the capability to develop and implement comprehensive energy efficiency and guaranteed savings programs to assist various State agencies in achieving mandated reductions in energy consumption. The State plans to enter into indefinite delivery contracts (IDC's) pursuant to Title 12, Subtitle 3 of the State Finance and Procurement Article of the Annotated Code of Maryland, Energy Performance Contracts.

### **2. SUBMITTAL INSTRUCTIONS**

- A. This solicitation shall be conducted in accordance with and is subject to the Code of Maryland Regulations (COMAR) Title 21, and State Finance and Procurement Article, except as otherwise indicated.
- B. Technical Proposals will be accepted from firms that offer a qualified design team either in-house or under contract to them to provide the complete feasibility study and design services required for EPC projects, qualified maintenance personnel to provide preventive maintenance and service throughout the length of the contract, financing for all capital costs of the project, and a guarantee of energy savings throughout the life of the project financing.
- C. Transmittal Letter: A transmittal letter must accompany the technical proposal. The purpose of this letter is to transmit the proposal and acknowledge the receipt of any addenda. The transmittal letter should be brief and signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP. Only one transmittal letter is needed and it does not need to be bound with the technical proposal.
- D. An unbound original and five (5) bound copies of the Technical Proposal must be received by the Procurement Officer, at the address listed, no later than January 21, 2010, 2:00 p.m. (local time) in order to be considered. It is the responsibility of the offeror to ensure receipt of proposal to the Procurement Officer by the due date and time. Proposals received after due date and time will be returned unopened. An electronic version (diskette or CD) of the Technical Proposal in MS Word format must be enclosed with the original technical proposal. Insure that the diskettes are labeled with the Date, RFP title, RFP number, Offeror name and packaged with the original copy of the technical proposal.
- E. Requests for extension of this date or time will not be granted. Offerors mailing proposals should allow sufficient mail delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.02.10, proposals received by the Procurement Officer after the due date January 21, 2010 at 2:00 p.m. (local time) will not be considered and returned unopened. Proposals may not be submitted by e-mail or facsimile. Proposals will not be opened publicly.
- F. Sealed Proposals must be submitted to the issuing office no later than 2:00 p.m. on

## SECTION I – PROCUREMENT OBJECTIVE

January 21, 2010.

- G. Pre-proposal conference will be held on January 7, 2010 at 10:00 at 301 West Preston St, in the 14th floor conference room. Attendance is not required but is highly recommended.
- H. The Proposal, if submitted by an individual, shall be signed by the individual; if submitted by a partnership, shall be signed by such member or members of the partnership as have authority to bind the partnership; if submitted by a corporation, shall be signed by an officer, and attested by the corporate secretary or an assistant corporate secretary. If not signed by an officer, as aforesaid, there must be attached a copy of that portion of the By-Laws, or a copy of a Board resolution duly certified by the corporate secretary, showing the authority of the person so signing on behalf of the corporation.
- I. The Offeror shall review all certificates and affidavits contained in the RFP and should either execute or be prepared to execute them, as appropriate. In the event that they cannot be executed, the Offeror shall so notify the State.

### 3. PROCUREMENT METHOD

- A. The procurement method being utilized in the conduct of this project is Competitive Sealed Proposals in accordance with COMAR 21.05.03.
- B. Selection of ESCOs under this IDC will be made to those successful Offerors whose Technical Proposals are determined to be the most advantageous to the State. Proposals shall be evaluated based on the evaluation criteria listed in Sections VI and VII of this RFP.
- C. Proposals will not be opened publicly, but shall be opened in the presence of the DGS Proposal Evaluation Committee. **The register of Proposals will be open to public inspection only after final award of the Contract.**
- D. A maximum of eight (8) ESCO to be selected based on the highest ranked firms.
- E. This IDC will be effective for a period of 24 months immediately following BPW approval with the unilateral option for two additional 12 month periods. If a qualified ESCO completes Phase I of a project after the period has expired, the ESCO may be awarded the Phase II work for that specific project.

### 4. CONTRACT AWARDS

- A. Phase I Contracts will be awarded based on selection criteria as specified in Section IV, Item 2 of this RFP.
- B. Individual contracts for Phase I work (see Section IV - Scope of Work) awarded under this agreement may not exceed \$250,000. Phase II contracts have no dollar limit, but must be approved by the Board of Public Works.
- C. The State's selection of successful Offerors under this agreement does not bind the State or the Offeror to enter into any Phase I or Phase II contracts.

## SECTION I – PROCUREMENT OBJECTIVE

### 5. ISSUING OFFICE AND PROCUREMENT OFFICER

Issuing Office: Office of Procurement and Logistics  
Department: General Services  
Address: 301 West Preston Street, Room M-7  
Baltimore, Maryland 21201

Phone: (410) 767-4945 (Questions pertaining to bid documents)  
Facsimile No: (410) 333-5164  
Procurement Officer: Debbie Pecora (410) 767-4945  
Debbie.pecora@dgs.state.md.us

For all matters arising prior to and including final ESCO selection under this agreement and for (1) all purchases, orders, changes or modifications during performance of the contracts awarded under this agreement, and (2) all disputes arising under the contracts subsequent to final award, the sole point of contact in the state for purposes of this RFP and any contract awarded under this RFP is the Procurement Officer. No State or DGS employee, official or representative has authority to change requirements of the contract except the Procurement Officer or his or her designated Representative subject to the limits of their authority and other limitations imposed by law.

### 6. CONTRACT WITH GOVERNMENT ORGANIZATIONS OTHER THAN DGS

A. Pursuant to Article 41, Section 18-201 of the Annotated Code of Maryland, except as provided in (b), the following entities may purchase materials, supplies, and equipment under this contract:

- 1) A county or Baltimore City;
- 2) A municipal corporation;
- 3) A governmental agency in the State with Primary Procurement Authority;
- 4) A public or quasi-public agency that:
  - (a) receives State money; and
  - (b) is exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code;
- 5) A private elementary or secondary school that:
  - (a) either has been issued a certificate of approval from the state Board of Education or is accredited by the Association of Independent Schools; and
  - (b) is exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code; or
  - (c) A non-public institution or higher education under Section 17-106 of the Education Article.
- 6) A government unit outside Maryland may use this contract if the qualified contractor extends such to them.

B. The right to purchase under this section shall be in addition to, but not in substitution for,

## **SECTION I – PROCUREMENT OBJECTIVE**

the applicable purchasing power granted to any of the listed entities pursuant to any statutory or charter provision.

- C. All purchases under this contract by any such entity which is not a unit or agency of the State of Maryland for which the State of Maryland may be held liable in contract (1) shall constitute a purchase or contract between the Contractor and that entity only, (2) shall not constitute a purchase or contract of the State of Maryland, (3) shall not be binding or enforceable against the State of Maryland or any of its units or agencies, and (4) may be subject to other terms and conditions agreed to by the Contractor and the purchaser. Contractor bears the risk of determining whether or not any entity from which the Contractor receives an order under the contract is a unit or agency of the State of Maryland such that the contract may be enforced against the State of Maryland.

## SECTION II – DEFINITIONS

In this RFP, the following terms have the meanings indicated:

- A. “Approved Equal” means those supplies or services, or compatible items of construction whose quality, design, or performance characteristics are functionally equal or superior to an item specified.
- B. “Change Order” means a written order signed by the responsible Procurement Officer, directing a Contractor to make changes which the changes clause of a contract authorizes the Procurement Officer to order with or without the consent of the Contractor.
- C. “Code” means the Annotated Code of Maryland.
- D. “COMAR” means the Code of Maryland Regulations.
- E. “Consulting engineer” means the State’s designed representative for design and engineering oversight.
- F. “Contract” means the written agreement executed between the State and the successful Offeror, covering the performance of the work and furnishing of labor, services, equipment, and materials, by which the Contractor is bound to perform the Work and furnish the labor, services, equipment and materials, and by which the State is obligated to compensate them, therefore at the mutually established and accepted rate or price.
- G. “Contractor” means the person or organization having direct contractual relation with the State for the execution of the “Work.” If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.
- H. “Contract Documents” means this RFP, the Technical Proposal and all amendments/addenda thereto, the successful Offerors’ Technical and financial Proposal, plans and specifications and construction drawings developed by the Contractor, other documents that may be referenced in the RFP or written contract, and the written contract, contract forms and bonds, notice to proceed, and any supplemental agreements that are required to complete the construction of the Work in an acceptable manner, including authorized extensions thereof.
- I. “Contract Price” means the amount payable to the Contractor under the Contract terms.
- J. “Contract Time” means the number of calendar days shown in the contract documents indicating the time allowed for the completion of the work contemplated in the Contract.
- K. “Critical Path Method (CPM)” means a scheduling/management tool showing a network or work elements or activities for a construction project.
- L. “Day” means calendar day unless otherwise designated.

## SECTION II – DEFINITIONS

- M. “Department” means the Department of General Services, State of Maryland.
- N. “DGS” means the Department of General Services, State of Maryland.
- O. “Employee” means all employees of the State of Maryland, whether classified, unclassified, or employed under a personal services contract of employment. It does not include independent contractors or successful Offerors.
- P. “Notice to Proceed” means a written notice to the Contractor of the date on or before which they shall begin the prosecution of the Work to be done under the Contract.
- Q. “OPL” means the Office of Procurement and Logistics of the Maryland Department of General Services.
- R. “Owner” means the State of Maryland or that Agency of the State administering the contract.
- S. “Payback Period” means the amount of time, in years, that the State will need to pay for the cost of the project, including all planning, engineering, design, construction, start-up, training, on-going maintenance, and interest for the length of the loan period.
- T. “Payment Bond” means the security in the form approved by the Department and executed by the Contractor and its surety, subject to Title 17, section 17-101 et.seq of the State Finance and Procurement Article of the Annotated Code of Maryland.
- U. “Performance Bond” means the security in the form approved by the Department and executed by the Contractor and the surety, guaranteeing complete performance of the Contract.
- V. “Plans and Specifications” mean the official construction drawings and specifications developed by the Contractor and approved by the State.
- W. “Procurement Officer” means that person described by the State Finance and Procurement Article and COMAR, and designated by the Secretary to make decisions with respect to the administration of the work when a project is administered by DGS. When a project is being administered by the Using Agency, that particular Agency will designate its procurement officer. The procurement officer will be identified at the job initiation conference.
- X. “Energy” means electricity, fuel, chilled water, steam and water, purchased or generated on-site.
- Y. “Operations Costs” means costs of personnel labor, maintenance materials and contract services, directly associated with operating and maintaining building lighting, HVAC and other energy consuming systems.
- Z. “Cost Avoidance” means the difference between current and baseline cost, baseline cost being what current cost would have been had no energy efficiency measures

## SECTION II – DEFINITIONS

been implemented. Baseline cost also reflects variation in weather severity, occupancy, equipment loads, operating patterns, and energy rates.

- AA. “Repair” means to restore after injury, deterioration, or wear, to mend, to renovate by such means as appropriate and to supply such materials and labor as necessary to render the item to be repaired sound, solid, true, plumb, square, even, smooth, in compliance with contract or warranty, and fully serviceable; and upon completion of such repair, unless otherwise stated to be in such conditions as to present a first-class finished work, or in instances where the repaired item serves as a base for additional finish, the repaired work must be such as to permit a first-class finish to be applied without extra cost to the State. When the word “repair” is used in connection with machinery or mechanical equipment it shall mean, in addition to the above, rendering the equipment completely serviceable and efficient and ready for normal use for which it was intended originally.
- BB. “RFP” means the Request for Proposal.
- CC. “Secretary” means the Secretary of the Department of General Services, State of Maryland.
- DD. “State” means the State of Maryland, which includes its agencies, departments, units, and its officials and employees when acting within the scope of their authority and in the course of their official duties.
- EE. “Subcontractor” means only those having a direct contract with the Contractor. It includes one who furnishes material worked to a special design according to the plans and specifications for the “Work.” It excludes one who merely finishes material not so worked. It also includes those supplying architectural, engineering, or other design services to the Contractor.
- FF. “Successful Offeror” means the entity to whom a contract is awarded as a result of this RFP.
- GG. “Surety” means the corporate body bound as required by law for the full and complete performance of the contract by the Contractor or for the payment by the Contractor to subcontractors and suppliers.
- HH. “Work” means the furnishing of all labor, materials, equipment, services, utilities, Architectural/Engineering and other design services, financing, cost savings guarantee, maintenance, training, and other incidentals necessary to the successful completion of the project and the carrying out of all the duties and obligations imposed upon the Contractor by the Contract.
- II. “Written Notice” means notice in writing if delivered in person to the individual or to the member of the firm or to an office of the corporation to whom it is intended, or delivered by registered mail, or other means permitted by law, including email, to the last business address. For purposes of written notice required to be delivered or served on the State, its agency(ies), department(s), unit(s), employee(s), or officer(s), delivery by electronic means, including email and facsimile, shall not be considered “written notice.”

## **SECTION II – DEFINITIONS**

- JJ. “State’s Approval” means it is approved in writing by a DGS or Using Agency.
- KK. “ECM” means Energy Conservation Measures.
- LL. “ESCO” means Energy Service Company.
- MM. “MEA” means Maryland Energy Administration.
- NN. EMM means EmarylandMarketplace

In the RFP, such terms as “proposer”, “developer”, and “offeror” are used interchangeably to refer to the offeror prior to selection of the successful offeror. Similarly, such terms as “selected developer”, “selected contractor”, “selected offeror”, or “successful offeror” are used interchangeably to refer to the successful offeror or list of approved offerors subsequent to selection.

## SECTION III - GENERAL CONDITIONS

### 1. CANCELLATION OF RFP OR REJECTION OF OFFERS

- A. The State reserves the right to cancel this Request for Proposal at any time before the date set for receipt of offers.
- B. The State reserves the right to reject all proposals at any time prior to final award.

### 2. DEBRIEFING AND UNSUCCESSFUL OFFERORS

- A. Unsuccessful Offerors will be notified in writing.
- B. Unsuccessful Offerors may request, in writing, a formal debriefing pursuant to COMAR 21.05.03.06. The request shall be addressed to the Procurement Officer, and received within seven (7) days, following notification of award.

### 3. DISCREPANCIES

- A. Additional information, clarifications, and amendments desired by a prospective Offeror regarding the RFP shall be requested only in writing from the Procurement Officer no later than ten (10) calendar days prior to the proposal due date. Requests shall include the RFP number and name of project, and shall be directed to the Procurement Officer. **ORAL EXPLANATIONS OR INSTRUCTIONS WILL NOT BE BINDING AND WILL NOT CHANGE THE TERMS OF THIS RFP.** Written addenda will be binding. Any addenda resulting from these requests or amendments will be mailed to all listed holders of the RFP. The Offeror shall acknowledge the receipt of all addenda in its Technical Proposal.
- B. The State reserves the right to amend the RFP at any time prior to preliminary award. Amendments will be incorporated into and handled as addenda. If the time and date for receipt of proposals does not permit incorporation of addenda, the due date will be delayed accordingly, and noted as such within the addenda; or, if necessary, by FAX, Certified Mail or Telephone, and confirmed by the addenda.

### 4. MODIFICATION AND WITHDRAWAL OF PROPOSALS

- A. Withdrawal of or modifications to proposals shall be effective only if written notice thereof is received prior to the time and the place specified for proposal due date and time in the Request for Proposal. A notice of withdrawal or modification to a proposal must be signed. If an offer is withdrawn in accordance with regulations, the bid security, if any, will be returned to the Offeror.
- B. Any proposal received at the place designated in the solicitation after the time and date set for receipt of offers is late. Any request for withdrawal or request for modification received after the time and date set for receipt of proposals at the place designated as late.
- C. A late proposal, late request for modification, or late request for withdrawal may only be considered in accordance with COMAR 21.05.02.10

## SECTION III- GENERAL CONDITIONS

### 5. LAWS AND REGULATIONS

All applicable Federal and State laws, municipal ordinances, and the rules and regulations of all governmental authorities having jurisdiction over the performance of the work shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though therein written out in full. In addition, the ESCO shall comply with the following:

#### A. COMAR Provisions:

The awarded ESCO shall comply with the following COMAR provisions which are incorporated into this contract and all Phase I and Phase II contracts:

- 1) 21.07.01.07 - Maryland Law Prevails
- 2) 21.07.01.17 - Pre-existing Regulations
- 3) 21.07.01.19 - Financial Disclosure
- 4) 21.07.01.20 - Political Contribution Disclosure
- 5) 21.05.08.07 - Bid/Proposal Affidavit
- 6) 21.07.01.25 - Contract Affidavit
- 7) 21.07.02.05-2 - Prompt Payment of Subcontractors
- 8) 21.07.02.05-3 - Retainage
- 9) 21.05.08.09 - Mercury Content
- 10) 21.07.01.18 - Payment of State Obligations
- 11) 21.07.01.05 - Non-Hiring of Officials and Employees
- 12) 21.07.01.09 - Contingent Fees
- 13) 21.07.01.16 - Suspension of Work
- 14) 21.07.01.22 - Compliance With Laws

#### B. Prevailing Wage Law:

Awarded Offeror performing Phase II shall comply with Prevailing Wage Law, when the specific contract value is \$500,000 or more. COMAR 21.11.11. Wage rates have to be individually requested from the Maryland Department of Labor Licensing and Regulation (DLLR), the information can be found at the link:  
<http://www.dllr.state.md.us/labor/prev.html>

### 6. OBLIGATION OF OFFEROR

At the time of the opening of Proposals, each Offeror shall be presumed to have read and to be thoroughly familiar with the RFP (including all addenda, if any). The failure or omission of any Offeror to examine any form, instruments, or document shall in no way relieve any such Offeror from any obligation in respect to its proposal.

### 7. NATURE OF THIS CONTRACT

This contract is not a "construction" contract, nor is it a contract for architectural or engineering services, even if, in the course of performance, the Contractor or its

### **SECTION III- GENERAL CONDITIONS**

subcontractors and/or sub-consultants may perform some construction or architectural/engineering services. This contract is an "energy performance contract" as defined in Section 11-101(h) of the State Finance and Procurement Article of the Annotated Code of Maryland. The State is not responsible for and makes no warranty of the accuracy of any information contained in the RFP respecting the State's facilities and the State is not responsible for:

- 1) Subsurface or latent physical conditions at the site differing materially from those indicated in the RFP or otherwise indicated by the State; or
- 2) Unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work provided for in the contract.

#### **8. PUBLIC INFORMATION ACT**

Offerors should give specific attention to the identification of those portions of their proposals which they deem to be confidential, proprietary information or trade secrets, and provide any justification of why such materials, upon request, should not be disclosed by the Owner under the Maryland Public Information Act, State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland.

#### **9. MINORITY BUSINESS ENTERPRISE REQUIREMENTS**

If the project value exceeds \$50,000 based on Phase II construction cost, an overall minimum MBE goal of 25% of the total dollar value of the contract is to be provided directly or indirectly from all certified minority business enterprises. However, individual and unique goals for each project may be assigned that may be different based on potential availability of MBE's for the work and location. The assigned MBE goal shall be applied to the total cost of the project including the construction and annual maintenance costs. Enclosed is a separate package of instructions and documents.

- A) A minimum of seven percent (7%) of the total dollar value of the contract is to be provided directly or indirectly from certified minority business enterprises classified by the certification agency as African American-owned businesses
- B) A minimum of ten percent (10%) of the total dollar value of the contract is to be provided directly or indirectly from certified minority business enterprises classified by the certification agency as women-owned businesses.

#### **10. ARREARAGE**

By submitting a response to this solicitation, a vendor shall be deemed to represent that it is not in arrears in the payment of any obligations due or owing the State of Maryland, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the contract id selected for contract award.

#### **11. ANNOUNCEMENT AND NOTIFICATION OF AWARD**

## **SECTION III- GENERAL CONDITIONS**

Announcement of award and Successful Offeror notification of award will be published on EmarylandMarketplace for each task awarded under this contract.

### **12. EXECUTION OF CONTRACT**

- A. Upon the acceptance of the Phase II proposal, the Department shall forward the formal contract and the forms for the Payment and Performance Bonds, Contract Affidavit, and MBE Utilization to the successful Offeror for execution. The Offeror shall execute the contract and return it with fully executed Payment Bond, Performance bond, Contract Affidavit, Guaranteed Energy Savings bond and Certificates of Insurance.
- B. After receipt of the properly executed contract form and other required documents, the Department will execute the Contract within 90 days and forward the successful Offeror a copy. In the event the State fails to execute the Contract within the 90-day period, the Offeror will have, as its only remedy, the option to declare the contract terminated without any liability by the State or to accept an extended period for execution by the State.

### **13. FAILURE TO EXECUTE CONTRACT**

Failure of the Offeror to execute the contract and file acceptable bonds within the time provided shall be just cause for the payment of the penal sum of the bid bond or other bid security.

### **14. PERFORMANCE AND PAYMENT BONDS**

The successful Offeror shall, prior to the execution of the Phase II portion of any assigned project, provide performance and payment bonds from a Surety company authorized to do business in the State of Maryland, properly executed in favor of the State of Maryland, each bond to be in an amount not less than 100% of the amount of the sum of the Net ECM cost.

### **15. OWNER'S RESPONSIBILITIES**

- A. The Owner will furnish information and description of the physical characteristics and capacity of equipment to be affected by this project.
- B. Information or services under the Owner's control will be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work.
- C. The Owner will confirm all verbal instructions to the Contractor in writing.
- D. The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Work by Owner or by separate Contractors, payments and completion, and insurance.
- E. Nothing in this Section shall make the State responsible to the Contractor for information furnished by the State.

### **16. CONTRACTOR'S RESPONSIBILITIES**

### SECTION III- GENERAL CONDITIONS

- A. The Contractor shall supervise and direct all phases of the work, using its best skill and attention. The Contractor shall be solely responsible for all feasibility studies, design and construction means methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the contract, including measurements and verification.
- B. The Contractor shall be responsible to the State for the acts and omissions of its employees, subcontractors, and their agents and employees, and other persons performing any of the work.
- C. The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the contract documents, and as required to maintain building operations, and shall not unreasonably encumber the site with any materials or equipment.
- D. Cutting and Patching of Work (Phase II only):
  - 1) The Contractor shall be responsible for all cutting, fitting, or patching that may be required to complete the Work or to make its several parts fit together properly.
  - 2) The Contractor shall not damage or endanger any portion of the work or the Work of the Owner or any separate Contractor by cutting, patching, or otherwise altering any Work, or by excavation. The Contractor shall not cut or otherwise alter the Work of the Owner or any separate Contractor except with the written consent of the Owner and of such separate Contractor. The Contractor shall not unreasonably withhold from the Owner or any separate Contractor his consent to cutting or otherwise altering the Work.
- E. The Contractor shall perform all Work in accordance with the lines, grades, typical cross sections, dimensions, and other data required by the contract documents or as modified by written orders, including the furnishing of all materials, services, implements, machinery, equipment, tools, supplies, transportation, labor, and all other items necessary for the satisfactory prosecution and completion of the project in full compliance with the requirements of the contract documents.
- F. Indemnification:
  - 1) To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the State and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to, attorney's fees arising out of or resulting from the performance of the work, provided that any such claim, damage, loss, or expense:
    - a) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting there from; and
    - b) is caused in whole or in part by any negligent act or omission or breach of contract of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of

### SECTION III- GENERAL CONDITIONS

them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

- 2) The obligations of the Contractor under this paragraph shall include the liability of its Architects, Engineers, agents, employees, subcontractors at any tier and their employees, agents and subcontractors arising out of (a) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (b) the giving of or the failure to give directions or instruction by any of the above, or the performance of any of the work required under the Contract.

#### 17. DRAWINGS AND SPECIFICATIONS

- A. Drawings: The Contractor shall do no Work without approved contract drawings, specifications, and/or instructions. For an approved project, drawings shall be provided by the Contractor as required in Section IV - Scope of Work. Drawings shall in general be drawn to scale with major equipment and location dimensions clearly indicated, and symbols used shall indicate materials and structural and mechanical requirements. Drawings shall be in conformance with the DGS Procedures Manual for Professional Services (latest edition). When symbols are used, those parts of the drawings are of necessity diagrammatic; and it is not possible to indicate all connections, fitting, fastenings, etc., which are required to be furnished for the proper execution of the Work. Diagrammatic indications of piping, ductwork, conduit and similar items in the Work are subject to field adjustment in order to obtain proper grading, fitting, passage over, under or past obstructions, to avoid exposure in finished rooms and unsightly and obstructing conditions. The Contractor shall make these adjustments, at no increased cost to the State.
  - 1) Copies Furnished: The Contractor shall furnish the State five (5) copies of the drawings and specifications.
  - 2) Copies at the Site: The Contractor shall keep in the job site office a complete set of all drawings, specifications, shop drawings, schedules, etc., in good order and available to the State. Additionally, one set of all contract drawings shall be maintained as/built drawings. As-built drawings shall be marked upon by the Contractor in the field on a regular basis to record all changes in the Work as they occur, and the exact location of all exposed and concealed pipe runs, valves, plugged outlets, cleanouts, and other control points including electrical conduits and ducts, in such manner as will provide a complete, accurate "as-built" record. The location of pipes or control points concealed underground, under concrete, in chases or above hung ceilings shall be dimensioned. "As-built" drawings, both hard copy and on CD, shall be delivered to the State, as a condition precedent to final acceptance of Work.
  - 3) Ownership: All documents remain the property of the State. They must not be used on other Work. They shall be returned to the State upon its completion.
- B. Large Scale Detail Drawings: The Contractor shall furnish, when the State directs, additional

### SECTION III- GENERAL CONDITIONS

instructions, in the form of large scale developments of the drawings used for bidding, or to amplify the specifications for the proper execution of the Work. These shall be true developments of the bidding documents and reasonably inferable there from. The Work shall be executed in conformity therewith.

- C. Dimensions: The Contractor shall carefully check all dimensions prior to execution of the particular Work. Dimensions for items to be fitted into construction conditions at the job will be taken at the job and will be the responsibility of the Contractor. No extra will be allowed by reason of Work requiring adjustments in order to accommodate the particular item of equipment.
- D. Specifications: Proper CSI formatted construction specifications shall be produced and submitted for the State's approval.

#### 18. SHOP DRAWINGS AND SUBMITTALS

- A. After checking and verifying all field measurements and after complying with applicable procedures specified in the contract documents, the Contractor shall submit to the State for review and approval, in accordance with the Contractor's schedule, shop drawings or other submittals which will bear a stamp or specific written indication that the Contractor has satisfied their responsibility under the contract documents with respect to the review of such submissions. The data on the shop drawing will be completed with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable the State to review the information as required. These drawings shall be prepared in conformity with the best practice and standards for the trade concerned. Due regard shall be given to speed and economy of fabrication and erection.
- B. All shop drawings must show the name and location of the project and the Department contract number.
- C. Size of Drawings: All shop drawings and details submitted to the State for approval shall be printed on sheets of the same size as the contract drawings specified in the Department of General Services Procedures Manual for Professional Services (latest edition). When a standard of a fabricator is of such size to print more than one drawing on a sheet of the size of the required drawings, this is acceptable. Sheets large than the required drawing size will not be accepted except when specifically permitted by the Department of General Services. Shop details supplied on a sheet of letter size (8-2-in. by 11-in.) are acceptable for schedules and small details.
- D. Items for Which Shop Drawings Will Be Required: Shop drawings shall be required for all items which are specifically fabricated for the work or when the assembly of several items is required for a working unit. Shop drawings are required for all reinforcing and structural steel, specially made or cut masonry units, miscellaneous metal work, specially made millwork, plaster molds, or moldings, marble and slate, special rough hardware and all heating, ventilating, piping, plumbing and electrical items requiring special fabrication or detailed connections including refrigeration, elevators, dumb waiters, laboratory equipment, ducts, etc.
- E. Copies Required: Contractor shall supply five (5) copies. Two (2) copies shall be returned to the Contractor after approval.

### SECTION III- GENERAL CONDITIONS

- F. Examination and Approval: The State will examine and return shop drawings with reasonable promptness, noting desired corrections, or accepting or rejecting them. The Contractor shall assume a minimum review time of two (2) weeks when submitting items for the state's approval.
- G. Field Dimensions and Conditions: The State is not responsible for the check of dimensions or existing conditions in the field. This is the sole responsibility of the Contractor. No consideration will be given to change orders due to existing field conditions.
- H. Resubmission: When the State notes desired corrections, or rejects the drawings, the Contractor shall resubmit the drawings with corrective changes.
- I. Contractor's Responsibility: Unless the Contractor has, in writing, notified the State to the contrary at the time of the submission, the State may assume that shop drawings and submittals are in conformity with the contract documents and do not involve any change in the Contract price or any change which will alter the space within the structure or alter the nature of the building from that contemplated by the contract documents.
- J. State's Notations: Should the Contractor consider any rejection or State's notation on the shop drawings to cause a change in the cost of the work from that required by the contract documents, then the Contractor shall desist from further action relative to the item he questions and shall notify the State, in writing, within five days of the additional or less cost involved. No Work shall be executed until the entire matter is clarified and the Contractor is ordered by the State to proceed. Failure of the Contractor to serve written notice as above required shall constitute a waiver of any claim in relation thereto. Similarly, should the State's notation or change involve less Work than is covered by the contract documents, the Contractor shall allow the State an equitable credit resulting from the change in the Work.

#### 19. COST AND PRICE CERTIFICATIONS (for phase II only)

- A. The Contractor by submitting cost or price information certifies that, to the best knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:
  - “(1) A negotiated contract, if the total contract price is expected to exceed \$100,000, or a smaller amount set by the procurement office; or
  - “(2) A change order or contract modification, expected to exceed \$100,000, or smaller amount set by the procurement officer.
- B. The price under this contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.
- C. The Contractor is allowed a maximum of 10% for profit and up to 15% overhead for work performed by his own forces, subject to negotiation by the State or the using agency/customer. The using agencies have the right to negotiate a lower rate

### SECTION III- GENERAL CONDITIONS

particularly for projects where the subtotal cost is above \$5 million.

- D. Pricing under this contract is based on Open Book Pricing. Projects assigned under this IDC shall be totally transparent and collaborative from start to finish, with full disclosure of all costs. The Contractor is required to maintain a full record of particulars of the cost of performing the obligations under this Contract; and when requested by the State, ESCO shall provide a summary of any of the costs, including details of any funds held by the Contractor specifically to cover such costs.

It is specified, and compliance requires, that the Contractor to keep and have available (and to ensure that its Subcontractors keep and have available) books of account in accordance with best accountancy practice with respect to this Contract. The books of account shall be available for inspection by the State (and any expert assigned by the State) upon reasonable notice, and shall present a report of these to the State as and when requested. Contractor shall obtain multiple quotes from available subcontractors, and such quotes shall be available for the State to review, showing in detail, for example:

1. direct labor and indirect labor costs;
2. direct materials and Subcontract costs;
3. overhead costs analyzed to identify appropriate categories such as administration;
4. payment details to suppliers and Subcontractors including canceled checks;
5. capital expenditure and such revenue expenditure as not detailed above;
6. other available items relating to the Contractor's costs, income and profit as the State may reasonably require;
7. cash flow statements of the Contractor,

- E. Markups shall not be allowed on project contingency, bonding and insurance, taxes or warranty costs.

#### 20. INTENT OF THE CONTRACT DOCUMENTS

It is the intent of the contract documents to require the Contractor to perform all of the work necessary to complete the project.

#### 21. ORDER OF PRECEDENCE AMONG CONTRACT DOCUMENTS

- A. The provisions of the following documents shall take precedence in this order:

1. the Contract form signed by the parties;
2. this RFP;
3. the approved drawings and specifications; and
4. Contractor's Phase II Proposal for the specific project.

- B. In the event of a conflict between provisions of the contract documents, the conflict shall be resolved in favor of the State in accordance with the Contractor's undertaking to be responsible for all design, investigation, site conditions, construction, financing, and maintenance, as provided in the scope of work, and in accordance with the

### **SECTION III- GENERAL CONDITIONS**

Contractor's express agreement that Contractor shall be entitled to no payment, reimbursement, damages, costs, expenses or compensation for any reason or cause except from cost savings.

#### **22. CONDITIONS AFFECTING THE WORK**

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work and the general and local conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve the Contractor from responsibility for successfully performing the work without additional expense to the State. The Contractor agrees not to place any credence in any understanding or representation concerning conditions made by any State employee or agents prior to the execution of this Contract, unless such understanding or representations are expressly stated in the Contract.

#### **23. CHANGES IN THE WORK**

- A. The Procurement Officer may, at any time, without notice to the sureties, if any, by written order designated or indicted to be a change order, make any change in the work within the general scope of the Contract.
- B. Any other written order or an oral order (which terms as used in this paragraph shall include direction, instruction, interpretation or determination from the Procurement Officer) which causes any such change, shall be treated as a change order under this clause, provided that the Contractor gives the Procurement Officer written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a change order.
- C. Except as herein provided, no order, statement, or conduct of the Procurement Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder.
- D. Subject to paragraph "C" above, if any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this Contract, whether or not changed by any order, an equitable adjustment shall be made and the Contract modified in writing accordingly; provided, however, that except for claims based on defective specifications, no claim for any change of method or manner of performance of the work shall be allowed for any costs incurred more than 30 days before the Contractor gives written notice as therein required; and further provided that the State shall have no liability to Contractor except from guaranteed cost savings.
- E. If the Contractor intends to assert a claim for an equitable adjustment under this clause, it shall, within 30 days after receipt of a written change order in the drawings and specifications or the furnishing of written notice of change of method or manner of performance of the work, submit to the Procurement Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the State. The statement of claim hereunder may be included in the notice of change in the method or manner of performance of the work.

### SECTION III- GENERAL CONDITIONS

- F. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment (100%) under this Contract.

#### 24. MODIFICATION OF CONTRACT PRICE (Phase II Only)

When changes in the work require modification of the Contract Price by change order, such modification shall be accomplished as follows: Any modifications to Phase II work or price must be approved by Procurement Officer, within the limits of their authority, or the Board of Public Works.

- A. **No modification to the contract price shall be allowed unless the Owner requests additional services, and this work is approved by the procurement officer and/or BPW. Under no circumstances shall the contract price be increased due to field conditions different than assumed by the Contractor, or additional design required due to errors or omissions of Contractor and/or architectural/engineering sub-consultants/ subcontractors.**
- B. For all changes in the work to be performed by a subcontractor, the Contractor shall furnish the subcontractor's fully-itemized breakdown of quantities, prices, man-hours and hourly rates which shall bear the original signature of a representative of the subcontractor authorized to act for the subcontractor. The Contractor shall furnish a detailed explanation and justification for the proposed change. If requested by the Owner, the Contractor shall submit proposals from suppliers or other supporting data required to substantiate costs.
- C. Modification of the Contractor Price shall be determined as follows (Phase II only):
  - 1) When unit prices are stated in the Contract, by application of such unit prices.
  - 2) A lump sum price, if agreed upon by both the State and Contractor. Payment to the Contractor shall be added to the project financed capital cost amount (unless capital funding is available). The revised capital cost amount will not be paid to the Contractor until the construction is 100% completed and accepted by the State.
  - 3) If job conditions, or the extent of a nature of the change, warrant it, or if the State and the Contractor fail to agree upon a lump sum price or the application of unit prices to determine the cost of any proposed change, the work may be done at the State's option on the basis of a Force Account as hereinafter stated under Paragraph 77. Under these conditions, the State shall have the right to issue an order for the Work to be performed and the Contractor shall proceed as directed under the provisions of Paragraph 26 and 77.
  - 4) If the change involves only a credit, the Contract Price will be reduced by the amount it would have cost the Contractor if the work omitted had not been eliminated; including overhead and profit, however, the Contractor and the subcontractor could be allowed to retain a sum not in excess of three percent (3%) for handling.
  - 5) If the change involves both a credit and a debit, both sums shall be shown and the two sums balanced to determine the adjusted total cost or credit. No allowance to the Contractor shall be made or allowed for loss of anticipated profits on account of any changes of the work.

### SECTION III- GENERAL CONDITIONS

- 6) Unless otherwise specified, the allowable mark-up for combined overhead and profit for work performed by the Contractor with their own forces will be based upon the monetary value of the work in accordance with the following schedule (excluding items included in overhead and profit):

<u>VALUE OF WORK</u>	<u>COMBINED OVERHEAD AND PROFIT</u>
\$0 - \$100,000	15%
Over \$100,000	Negotiated but not more than 15%

- 7) For work performed by a subcontractor with its own forces, the contractor shall submit cost or price information and shall certify that, to the best of his knowledge, the information submitted is accurate, complete, and current in accordance with COMAR 21.06.04.
- 8) On all change in the work, the Contractor will be reimbursed for its expenditures for Workmen's Compensation Insurance, Social Security Taxes, and Unemployment Compensation Taxes covering persons actually engaged upon the Work and the actual increased cost of bonds.
- 9) The cost of foremen and superintendents may be added only when the change order makes necessary the hiring of additional supervisory personnel or makes their employment for time additional to that required by the basic Contract.
- 10) The Contractor shall be allowed the actual cost for rental of machine power tools or special equipment, including fuel and lubricants which are necessary to execute the work required on the change, but no percentages shall be added to this cost. The rental rate is to be agreed upon by the State and the Contractor; the rate shall relate generally to the latest as filed by the Associated Equipment Distributors.
- 11) If the Contractor and the State cannot agree as to the extent the contract time shall be increased for extra work or the extent the Contract time shall be reduced for Work omitted by the State, the increase or decrease, as the case may be, shall be determined by the Procurement Officer. Any disagreement with this decision may be appealed by the Contractor under the Disputes Clause.
- 12) Notwithstanding any provisions in the contract documents, the State shall not be liable to the Contractor, for any Phase II work, except from guaranteed cost savings.
- D. The allowable percentages of cost for overhead and profit are deemed to include, but not be limited to, the following: Job supervision (project manager, construction foreman/supervisor) and field office expense if used by contractor, expenses for timekeepers, clerks and watchmen, cost of correspondence of any kind, and insurance not specifically mentioned herein, all expenses in connection with the maintenance and operation of the field office, use of small tools or equipment to job location, and incidental job burdens. No percentage allowances will be made for maintenance or operation of Contractor's regularly-established principal office, branch office or similar facilities.

#### 25. UNAUTHORIZED WORK

The Contractor shall **not** be paid for any work not authorized in writing by the State.

## **SECTION III- GENERAL CONDITIONS**

### **26. CONFORMITY WITH CONTRACT REQUIREMENTS**

- A. All work performed and all materials furnished shall be in conformity with the Contract requirements.
- B. In the event the Owner finds the materials or the finished product in which the materials are used for the work performed are not in complete conformity with the Contract requirements and have resulted in an inferior or unsatisfactory product, the work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor.
- C. In the event the Owner finds the materials or the finished product in which the materials are used are not in complete conformity with the Contract requirements, but have resulted in a satisfactory product, the Owner shall then make a determination if the work shall be accepted. In this event, the Owner will document the basis of acceptance by a Change Order which will provide for an appropriate adjustment in the Contract price. Contractor is at risk for non-compliant work. Retroactive Change Orders are not acceptable.

### **27. ADJACENT WORK**

- A. The State shall have the right, at any time, to contract for and/or perform work on, near, over or under the work covered by this Contract. In addition, other work may be performed under the jurisdiction of another State agency. The Contractor shall cooperate fully with such other Contractors and carefully fit their own work to such other work as may be directed by the Procurement Officer.
- B. The Contractor agrees that in event of dispute as to cooperation or coordination with adjacent Contractors the State will act as referee and decisions made by the State will be binding. The Contractor agrees to make no claims against the State for any inconvenience, delay or loss experienced because of the presence and operations of other Contractors. State will be fully cooperative with all Contractors to resolve the matter.

### **28. CONTROL BY THE CONTRACTOR**

The Contractor shall constantly maintain efficient professional supervision of the work, using current project/construction management procedures. They shall carefully study and compare all drawings, specifications, and other instructions and check them against conditions existing or being constructed on the project. Contractor shall immediately report to the State any error, inconsistency or omission which he may discover. The Contractor's project manager shall be on site at all times during the construction period, unless otherwise directed by the Using Agency.

### **29. COOPERATION WITH UTILITIES**

- A. It is understood and agreed that the Contractor has considered in its proposal all of the permanent and temporary utility appurtenances in their present or relocated positions and that no additional compensation will be allowed for normal delays, inconvenience, or damage sustained by them due to any interference from the said utility appurtenances, the operation of moving them, or the making of new connections thereto, if required for installation and operation of the Contractor's equipment.

### **SECTION III- GENERAL CONDITIONS**

- B. The Contractor shall have responsibility for notifying all affected utility companies prior to performing any work on their utilities and shall cooperate with them in achieving the desired results. All damage to utility facilities caused by the Contractor's operations shall be the responsibility of the Contractor.
- C. At points where the Contractor's operations are adjacent to properties of railway, telegraph, telephone, water and power companies, or are adjacent to other property, damage to which might result in expense, loss or inconvenience, work shall not be commenced until all arrangements necessary for the protection thereof have been made by the Contractor. Contractor is responsible to notify the Miss Utility, prior to start of work.
- D. The Contractor shall cooperate with the owners of any underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner, that duplication or rearrangement work may be reduced to a minimum and that services rendered by those parties will not be unnecessarily interrupted.
- E. In the event of interruption to utility services as a result of accidental breakage or as a result of being exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate with the said authority in the restoration of service. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority.

#### **30. AUTHORITY AND DUTIES OF STATE PROJECT MANAGER & INSPECTORS**

- A. State inspectors and other State personnel will be authorized to inspect all work done and all material furnished. Such inspection may extend to all or any part of the work and to the preparation, fabrication or manufacture of the materials to be used. The inspector is not authorized to revoke, alter, or waive any requirements of the Contract, or to approve or accept any portion of the complete project. The inspectors are authorized to call to the attention of the Contractor any failure of the work or materials to conform to the Contract. The inspectors are authorized to reject materials or suspend the work until any questions at issue can be referred to and decided by the Procurement Officer. Inspectors will perform their duties at such times and in such manner as will not unnecessarily impede progress on the Contract.
- B. The inspector will in no case act as foreman or perform other duties for the Contractor, or interfere with the management of the work by the latter.
- C. Any advice which the inspector may give the Contractor shall not be construed as binding the State in any way, or releasing the Contractor from fulfilling all the terms of the Contract. The duty of the inspector on the project is to observe the progress of the work and to report any deviations from the requirements of the contract documents; however, should the inspector fail to report any such deviation from the Contract requirements, this does not release the Contractor from fulfilling all of the terms of the Contract. Actions of the inspectors are for the benefit of the State only.
- D. Where there is disagreement between the Contractor and the inspector, the inspector will advise the Procurement officer who will prepare and deliver in writing to the Contractor, by mail or otherwise, a written order served from the procurement officer suspending the

## **SECTION III- GENERAL CONDITIONS**

work and explaining the reason for such shutdown. As soon as the inspector is advised of the delivery of the shutdown order, the inspector will immediately leave the site of the work and any work performed during the inspector's absence will not be accepted or paid for and may be required to be removed and disposed of at the Contractor's expense.

### **31. INSPECTION OF THE WORK**

- A. All work, including the fabrication and source of supply, is subject to observation by the Department, and those agencies required by law to inspect specific items. The State is not responsible fiscally or legally for the actions of county, municipal, or other local officials.
- B. The Contractor shall provide facilities for access and inspection as required by the State.
- C. If the specifications, the Department's instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, the Contractor shall give the State timely notice of its readiness for inspection, and if the inspection is by another authority, the date fixed for such inspection. Inspections by the State shall be made promptly and where practicable at the source of supply. Any work covered without approval of the Department must, if required by the Consulting Engineer or the Department, be uncovered for examination at the Contractor's expense.

### **32. REMOVAL OF DEFECTIVE WORK**

- A. All work and materials which do not conform to the requirements of the Contract will be considered unacceptable.
- B. Any unacceptable or defective work, whether the result of poor workmanship, use of defective materials, damage through carelessness, or any other cause, found to exist shall be removed and replaced by work and materials which shall conform to the Contract requirements or shall be remedied otherwise in an acceptable manner approved or authorized by the Procurement Officer.
- C. Upon failure on the part of the Contractor to comply promptly with any order of the State, made under the provisions of this Section, the State will have the authority to cause defective or unacceptable work to be remedied or removed and replaced and unauthorized work to be removed and to cause the costs to be deducted from any monies due or to become due the Contractor under this Contract.

### **33. MAINTENANCE OF WORK DURING CONSTRUCTION**

- A. The Contractor shall maintain the work during construction and until acceptance. This maintenance shall be continuous and effective, prosecuted with adequate equipment and forces to the end that all parts of the work be kept in satisfactory condition at all times and protected from damage of any kind from external sources.
- B. All cost of maintenance work during construction and before final acceptance shall be included in the price proposal and the Contractor will not be paid any additional amount for such work.
- C. In the event that the Contractor's work is halted by the State for failure to comply with the provisions of the Contract, the Contractor shall maintain the entire project as provided

### SECTION III- GENERAL CONDITIONS

herein as may be necessary during the period of suspended work or until the Contractor has been declared in default.

- D. All work associated with this IDC is intended to be cost neutral to the State. All work and/or inspection of contractor's work needed to be performed by State forces after hours, on weekend or Holidays, whether anticipated or unanticipated, the ESCO shall account for such additional cost in his proposal, or an equivalent amount shall be deducted from the ESCO monthly invoice.

#### 34. FAILURE TO MAINTAIN ENTIRE PROJECT

Failure on the part of the Contractor, at any time, to adequately maintain installed equipment shall result in the State notifying the Contractor to comply with the required maintenance provisions of the Contract. In the event that the Contractor fails to remedy unsatisfactory maintenance within 24 hours after receipt of such notice, the State will immediately proceed with adequate forces and equipment to maintain the project, and the entire cost of this maintenance will be deducted from funds due the Contractor.

#### 35. STATE'S RIGHT TO DO WORK

If the Contractor should neglect to execute the Work properly or fail to perform any provision of this Contract, the State may either perform the work or procure the services and deduct the cost thereof from the funds then or thereafter due the Contractor.

#### 36. MATERIALS - GENERAL

- A. All materials shall meet all quality requirements of the Contract. In order to expedite the inspection and testing of materials, the Contractor shall notify the State in writing of the sources from which they propose to obtain all materials requiring approval, testing, inspection, or certification prior to incorporation into the work as soon as possible after receipt of notification of award of the Contract.
- B. Materials include all manufactured products and processed and unprocessed natural substances required for completion of the Contract. The Contractor, in accepting the Contract, is assumed to be thoroughly familiar with the materials required and their limitation as to use, and requirements for connection, setting, maintenance, and operation. Whenever an article, material or equipment is specified and a fastening, furring, connection (including utility connections), access hole, fishing closure piece, bed or accessory is normally considered essential to its installation in good quality construction, such shall be included as if fully specified. Nothing in this RFP shall be interpreted as authorizing any work in any manner contrary to applicable laws, codes, or regulations.
- C. Approval: All materials submitted in the Contractor's specifications and as required in this RFP are subject to the State's approval as to conformity with the type, quality, design, color, etc. No work for which approval is necessary shall be completed until written approval is given by the State. Approval of a subcontractor or supplier as such does not constitute approval of a material which is other than that included in the specifications.
- D. New Materials: Unless otherwise specified, all materials shall be new. Old materials must not be used as substitutes for new, regardless of condition or repair, unless approved in writing by the Procurement Officer.

## SECTION III- GENERAL CONDITIONS

- E. Quality: All materials shall be of the best quality of the respective kinds.
- F. Samples: The Contractor shall furnish for approval all samples as directed. The materials used shall be the same as the approved samples.
- G. Proof of Quality: The Contractor shall, if requested, furnish satisfactory evidence as to the kind and quality of materials either before or after installation. The Contractor shall pay for any tests or inspections called for in the specifications and such tests as may be deemed necessary for "substitutions," as set forth in these General Conditions.
- H. Standard Specifications: When no specification is cited and the quality, processing, composition or method of installation of a thing is only generally referred to, then:
  - 1. For items not otherwise specified below, the latest edition of the applicable American Society for Testing and Materials specification is the applicable specification.
  - 2. For items generally considered as plumbing and those items requiring plumbing connections, the applicable portions of the latest edition of the Building Officials and Code Administrators code are the applicable specification.
  - 3. For items generally considered as heating, refrigerating, air-conditioning, or ventilating, the applicable portions of the latest four editions of the ASHRAE Handbook published by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., are the applicable specification.
  - 4. For items generally considered as site work, the applicable portions of the Maryland State Highway Administration standard specifications is the applicable specification.
  - 5. For items generally considered as electrical, the applicable provisions of the latest edition of the National Electrical code are the applicable specification.
  - 6. For items generally considered as fire protection, the applicable portion of the latest edition of the National Fire Protection Association Code is the applicable specification.

### 37. STORAGE AND HANDLING OF MATERIALS

- A. Materials shall be so stored as to assure the preservation of their quality and acceptability for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located so as to facilitate their prompt inspection. Approved portions of the project site may be used for storage purposes and for the placing of the Contractor's plant and equipment; such storage areas must be restored to their original condition by the Contractor at his expense.
  - 1. All mechanical and/or electrical equipment delivered to the job site shall be stored on pedestals, above ground and under roof or other approved covering. All enclosures for equipment shall be weatherproof. Any motors, which are not totally enclosed, and dry type transformers that are involved in the work, shall be stored in a heated area with a minimum temperature of fifty degrees Fahrenheit (50EF).
  - 2. All valves shall be stored under roof on wood pedestals, aboveground. All insulation

### **SECTION III- GENERAL CONDITIONS**

shall be stored under roof or in trailers, adequately protected from the weather. The Contractor shall follow all written instructions and recommendations of the manufacturer on oiling, protection and maintenance of equipment during storage. It shall be the Contractor's complete responsibility for the storage and care of the equipment and materials. Material not properly stored prior to installation shall not be considered for payment.

3. Materials shall be handled in such a manner as to preserve their quality and acceptability for the work.
4. Contractor shall confine his tools and equipment and the storage of materials to the area delineated in the contract documents as to the "Limit of Contract."
5. Contractor shall not load or permit any part of a structure to be loaded with a weight that will endanger the safety of the structure or any part thereof.

B. Explosives. Explosives shall not be used on projects covered under this contract.

C. Paints.

- 1) Oil base paints and flammable liquids shall not be stored in quantities beyond what would be consumed in a one day on the project. Containers shall be limited to five gallon size. Any liquid with a flash point of less than one hundred (100) degrees F shall be contained in safety cans, UL approved. Liquid with a higher flash point shall be stored in rigid cans.
- 2) Oily rags, waste, etc., must be removed from the work site at the close of each working day.

### **38. SUBSTITUTIONS**

- A. Should the Contractor desire to substitute another material for one or more specified by name in the RFP or the approved specifications, the Contractor shall apply in writing, for such permission and state the credit or extra involved by the use of such material. The State will not consider the substitution of any material different in type of construction methods unless such substitution affects a benefit to the State.
- B. The Contractor shall not submit for approval materials other than those specified without a written statement that such a substitution is proposed. Approval of a "substitute material" by the State when the Contractor has not designated such materials as a "substitute," shall not be binding on the State nor release Contractor from any obligations of his Contract, unless the State approves such "substitution" in writing expressly acknowledging the substitution.

### **39. APPROVED EQUALS**

The terms "Or Equal," "Equal," "Approved Equal," where used, are used as synonyms in this RFP. They are implied in reference to all named manufacturers in the RFP and specifications unless otherwise stated. Only materials fully equal in all details will be considered. The Department is the final judge of the equality. The Department does not

### **SECTION III- GENERAL CONDITIONS**

represent or warrant under any circumstances, including by use of the words "or equal," that there exists an equal to any item specified.

#### **40. CONTRACTOR'S OPTIONS**

When several products or manufacturers are named in the specifications and approved by the State for the same purpose or use, then the Contractor may select any of those so named. However, all of the units required for, and used in, the project must be the same in material and manufacture.

#### **41. TESTS**

- A. If the contract documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the work to be inspected, tested, or approved, the Contractor shall give the State timely notice of its readiness so the State may observe such inspection, testing, or approval. The Contractor shall bear all costs of such inspections, tests, or approvals.
- B. If the State determines that any work requires special inspection, testing, or approval which the contract documents do not include, the State will instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in A., above. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the contract documents, the Contractor shall bear all costs thereof, including compensation for the State's additional services made necessary by such failure; otherwise the State shall bear such costs, and an equitable adjustment will be made in the Contract price.
- C. Required certificates of inspection, testing or approval shall be obtained by the Contractor and promptly delivered by them to the State. The work shall not be considered 100% complete until such certifications are in the possession of the State.

#### **42. BUY AMERICAN STEEL**

Contractor shall comply with the requirements of Title 17, Subtitle 3 of the State Finance and Procurement Article of the Annotated Code of Maryland and COMAR 21.11.02.

#### **43. LAWS TO BE OBSERVED**

The Contractor hereby represents and warrants that:

- A. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- B. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- C. It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and

### **SECTION III- GENERAL CONDITIONS**

- D. It shall obtain, at its expense, all licenses, permits, insurance, and government approvals, if any, necessary to the performance of its obligations under this Contract.

In addition, if the Contractor observes that the drawings and specifications are at variance with any law, they shall promptly notify the State, and make any necessary changes to the drawings and specifications to bring them into compliance with the law at no extra cost to the State. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the State, it shall bear all costs arising there from.

#### **44. PERMITS AND LICENSES**

Contractor will file with the appropriate local authorities, drawings and specifications and any pertinent data reasonably proper for their information. The Contractor will be required to pay all necessary fees to local authorities for inspection or for the privilege or right to execute the work as called for in the contract documents and Contractor shall include the cost of said fees in its financial proposal.

#### **45. PATENTED DEVICES, MATERIALS AND PROCESSES**

- A. The Contractor shall pay for all royalties and license fees. They shall defend all suits or claims for infringement of any patent rights and shall save the State harmless from loss on account thereof.
- B. When a particular process or the product of a particular manufacturer or manufacturers is specified or proposed to be used that may be an infringement of a patent, the Contractor will at his option: (1) procure for the State the right to use the applicable process or product; (2) replace the process or product with a non-infringing process or product complying with the specifications; or (3) modify the process or product so it become non-infringing and performs in a similar manner to the original item.

#### **46. LAND, AIR AND WATER POLLUTION**

- A. If requested or required, the Contractor must submit evidence to the Department that the governing Federal, State, and local air pollution criteria will be, and were, met. This evidence and related documents will be retained by the Department for on-site examination.
- B. If the performance of all or any part of the work is suspended, delayed, or interrupted due to an order of a court of competent jurisdiction as a result of environmental litigation, as defined below, the Procurement Officer, at the request of the Contractor, shall determine whether the order is due in any part to the acts or omissions of the Contractor required by the State as one of the terms of this Contract. If it is determined that the order is not due in any part to acts or omissions of the Contractor required by the terms of this Contract, such suspension, delay, or interruption shall be considered as if ordered by the Procurement Officer in the administration of this Contract under the terms of the "Suspension of Work" clause of this Contract. The period of such suspension, delay, or interruption shall be considered reasonable, and an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) as provided in that

### SECTION III- GENERAL CONDITIONS

clause, subject to all the provisions thereof.

#### 47. CONSTRUCTION INSURANCE REQUIREMENTS

##### A. Insurance During Construction

- 1) The Contractor and his subcontractors shall purchase and maintain comprehensive third-party legal liability insurance and other such insurance as is appropriate for the work to be performed on the project. Further, the Contractor shall be responsible of the maintenance of this insurance whether the work is performed directly by the Contractor, by any subcontractor, by any person employed by the Contractor or any subcontractor, or by anyone for whose acts the Contractor may be liable. This insurance shall include protection for:
  - a) Claims arising from Worker's Compensation statutes or similar employee benefit acts, or third-party legal liability claims arising from bodily injury, sickness and disease, or death of Contractor's employees. The minimum limits of such coverage shall be as required by law.
  - b) Third-party legal liability claims against the Contractor arising from the operations of the Contractor, subcontractors, and supplies with such protection extended to provide comprehensive coverage, including personal injury, completed operations, explosion and collapse hazard, and underground hazard. The minimum combined limit for personal injury and property damage liability shall be \$1,000,000 per occurrence and \$2,000,000 in the aggregate, unless higher limits are stated elsewhere in the contract documents.
  - c) Third-party legal liability claims arising from bodily injury and/or damage to property of others from the ownership, maintenance or use of any motor vehicle, both on-site and off site. The minimum combined limit for personal injury and property damage liability shall be: \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- 2) The Contractor shall purchase and maintain property insurance (Builder's Risk) covering the project, including improvements to real property and goods and materials on the site to be incorporated into the project. Such property insurance shall be for the full insurable value of the property covered and shall be written on an "All Risk" basis covering physical loss and damage including theft, vandalism and malicious mischief, collapse, water damage, and such other perils as may be applicable to the project. Such insurance shall include the interest of the Owner, the General Contractor, and all subcontractors as their interest may appear.

- B. General: All insurance required shall be purchased and maintained with a company or companies lawfully authorized to do business in the State of Maryland. Such insurance shall be for limits of liability as specified for the project or legally required, whichever is greater. All required insurance policies shall be endorsed to provide thirty (30) days prior written notice by certified mail, or any material change, cancellation, or non- renewal to:

Department of General Services  
Contract Services Division  
301 West Preston Street, Room M-7

### **SECTION III- GENERAL CONDITIONS**

Baltimore, Maryland 21201

- C. All required insurance shall be maintained until the State has fully accepted the work required under the Contract. Failure to obtain or to maintain the required insurance or to submit the required proof of insurance shall be grounds for termination of the Contract for default. The State of Maryland shall be identified as an additional insured.

#### **48. ASSIGNMENTS**

The Contractor shall not assign the Contract and shall not assign any monies due or to become due to him hereunder, without the previous written consent of the State in accordance with COMAR 21.05.02.24.

#### **49. SEPARATE CONTRACTS**

- A. The State reserves the right to let other contracts in connection with this work. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with theirs.
- B. If any part of the Contractor's work depends on proper execution or results upon the work of any other Contractor, the Contractor shall inspect and promptly report to the State any defects in such work that render it unsuitable for such proper execution and results. Their failure to so inspect and report shall constitute an acceptance of the other Contractor's work as fit and proper for the reception of his work, except as to the defects which may develop in the other Contractor's work after the execution of his work.
- C. To ensure the proper execution of his subsequent work, the Contractor shall measure work already in place and shall at once report to the Procurement Officer any discrepancy between the executed work and the drawings.

#### **50. RELATIONSHIP OF CONTRACTOR TO PUBLIC OFFICIALS AND EMPLOYEES**

- A. In carrying out any of the provisions of the Contract, or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability upon the Procurement Officer or other authorized representatives of the State, it being understood that in all such matters they act solely as agents and representatives of the State.
- B. The State may terminate the right of the Contractor to proceed under this Contract if it is found by the Procurement Officer that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing a contract.
- C. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- D. Non hiring of State employees – No official or employee of the State of Maryland, as defined under State Government Article, §15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject

### **SECTION III- GENERAL CONDITIONS**

matter of this contract, shall during the pendency and term of this contract and while serving as an official or employee of the State become or be an employee of the contractor or any entity that is subcontractor to this contract.

#### **51. NO WAIVER OF LEGAL RIGHTS**

- A. The State shall not be precluded or stopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the work and payment therefore, from showing the true amount and character of the work performed and materials furnished by the Contractor, or from showing that any such measurement, estimate or certificate is untrue or is incorrectly made, or from showing that the work or materials do not in fact conform to the requirements of the Contract. The State shall not be precluded or stopped, notwithstanding any such measurement, estimate, or certificate and payment from recovering from the Contractor or his sureties, or both, such damage as it may sustain by reason of his failure to comply with the terms of the Contract. Neither the acceptance by the State, or any representative of the State, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the State shall operate as a waiver of any portion of the Contract or of any power herein reserved, or of any right to damages.
- B. The waiver by the State of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

#### **52. ASSIGNMENT OF ANTI-TRUST CLAIMS**

The Contractor sells, transfers, and assigns to the State of Maryland all rights, title and interest of and in and to any causes of action arising at any time before the date of this assignment or during the performance of this Contract under the anti-trust Laws of the United States, including Section 1 of the Sherman Act, and the Antitrust Law of Maryland relating to the purchase by him or the State of Maryland of any products from any supplier or source whatever that is incorporated in the structure built under the terms of this agreement. The Contractor hereby certifies that the above causes of action are lawfully owned and that no previous assignment of same has been made nor has the same heretofore been attached or pledged in any manner whatsoever.

#### **53. FEDERAL PARTICIPATION**

When the United States Government pays all or any portion of the cost of a project, the work shall be subject to the inspection of the appropriate Federal agency. Such inspection shall in no sense make the Federal government a party to this Contract, and will not interfere, in any way, with the rights of either party hereunder.

#### **54. DISPUTES**

- A. This Contract is subject to the provisions of State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland and COMAR 21.10. (Administrative and Civil Remedies.)

### **SECTION III- GENERAL CONDITIONS**

- B. Except as may otherwise be provided in the Act or aforesaid regulations, all disputes arising under or as a result of a breach of this Contract which are not disposed of by mutual agreement shall be resolved in accordance with this clause.
- C. As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this Contract.
- D. Unless a lesser period is provided by applicable statute, regulation, or this Contract, the Contractor must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 30 days of the filing of a notice of claim, no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.
- E. When a controversy cannot be resolved by mutual agreement, the Contractor shall submit a written request for final decision to the Procurement Officer. The written request shall set forth all the facts surrounding the controversy.
- F. In connection with any claim under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his claim to the Procurement Officer.
- G. The Procurement Officer will render a written decision on all claims. This decision will be furnished to the Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of the receipt. The Procurement Officer's decision will be deemed the final action of the State. The decision shall be furnished to the Contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The Procurement Officer's decision shall be deemed the final action of the State.
- H. The Procurement Officer's decision will be final and conclusive unless the Contractor files a written appeal with the Maryland State Board of Contract Appeals within 30 days of receipt of said decision.
- I. Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision or interpretation.

#### **55. ENTIRE AGREEMENT**

The Contract constitutes the entire agreement between the parties hereto and other communications between the parties prior to the execution of the Contract, whether written or oral, with reference to the subject matter of the Contract, are superseded by the agreements contained herein. The Contract may not be modified, amended, changed or altered except by written instrument executed by the parties hereto and approved by the Procurement Officer.

#### **56. NOTICE TO PROCEED (Phase I and Phase II)**

### **SECTION III- GENERAL CONDITIONS**

After the Contract has been executed, the State will issue to the Contractor a "Notice to Proceed" and this notice will stipulate that date on or before which the Contractor is expected to begin work. Any preliminary work started, or materials ordered, before receipt of the "Notice to Proceed," shall be at the risk of the Contractor.

#### **57. PROSECUTION OF THE WORK; DELAYS AND EXTENSION OF TIME**

- A. It is imperative that the Contractor complete the work within the time limits specified and agreed to in the contract.
- B. The date of commencement of the work is the date established in a Notice to Proceed signed by the Project Manager.
- C. The Contractor agrees to prosecute the work continuously and diligently and no charges or claims shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

#### **58. PUBLIC CONVENIENCE AND SAFETY**

The Contractor at all times shall conduct the work in such a manner as to create the least practicable obstruction to all forms of traffic. The convenience of the general public, tenants, and of the residents along and/or adjacent to the improvement shall be respected. Material stored upon the project shall be placed so as to cause a minimum of obstruction to the public. Sprinkling shall be performed at the direction of the Procurement Officer. The Contractor shall, unless otherwise specified, provide and maintain in passable condition such temporary access, roads and bridges as may be necessary to accommodate traffic diverted from the project under construction, or using the project under construction and shall provide and maintain in a safe condition temporary approaches to, and crossings of, the project. Existing facilities planned to be removed, but which might be of service to the public during construction are not to be disturbed until other and adequate provisions are made. Fire hydrants on or adjacent to the project shall be kept accessible to fire apparatus at all times, and no material or obstruction shall be placed within 15 feet of any such hydrant. Work closed down for the winter or at any other times shall be left entirely accessible at all points to fire apparatus. All footways, gutters, sewer inlets and portions of the project under construction shall not be obstructed more than is absolutely necessary.

#### **59. BARRICADES AND WARNING SIGNS**

The Contractor shall provide, erect and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs and other control devices, and shall take all necessary precautions for the protection of the work and safety of the agency and its

### SECTION III- GENERAL CONDITIONS

employees.

#### 60. PRESERVATION, PROTECTION, AND RESTORATION OF PROPERTY

- A. The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the State property from injury or loss arising in connection with this Contract. He shall repair and indemnify against any such damage, injury or loss, except such as may be directly due to errors in the contract documents or caused by agents or employees of the State. He shall adequately protect adjacent property as provided by law and the contract documents.
- B. The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the work, all necessary safeguards for the protection of workmen and the public and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hod hoists, well holes, elevator hatchways, scaffolding, window openings, stairways, and falling materials.

#### 61. PROGRESS SCHEDULE AND TIME (Phase II only)

- A. Preparation of Work Schedule. The Contractor shall prepare a Critical Path Method (CPM) schedule setting forth his dates for completing various portions of the work. Included among the tasks set forth on the schedule shall be the critical design completion dates, submittal dates (to the State), and dates for return of the approved submittals. The schedule shall be reviewed by the State for approval of the time within which the State must evaluate the Contractor's submittals. The State's approval of the Contractor's schedule does not constitute an approval of the entire schedule; it merely constitutes an approval of that portion of the schedule that relates to the State's review of submittals. Offeror shall assume a turnaround time of 3 weeks for submittal review by the State.
- B. Preparation of Critical Path Method Schedules. The Contractor shall submit a CPM to DGS before the Notice to Proceed is issued. The CPM will be updated at least monthly, or more often if dictated by circumstances, to reflect changes and variances in the progress of the project.

#### 62. SUSPENSION OF THE WORK

- A. The Procurement Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for a period of time as he may determine to be appropriate for the convenience of the State.
- B. No request for an extension under this clause will be allowed:
  - 1. for any costs incurred more than 30 days before the Contractor shall have notified the Procurement Officer in writing of the act or failure to act involved,
  - 2. unless the request is asserted in writing no more than 30 days after the termination of a suspension, delay, or interruption, but not later than the date of final payment under the Contract.

#### 63. STATE'S RIGHT TO TERMINATE FOR ITS CONVENIENCE

### **SECTION III- GENERAL CONDITIONS**

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State.

#### **64. TERMINATION FOR DEFAULT**

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor in accordance with COMAR 21.07.01.11B.

#### **65. PARTIAL ACCEPTANCE**

- A. If during the construction of work the State desires to occupy any portion of the project, the State will have the right, at its sole option and discretion, to occupy and use those portions of the project which in the opinion of the Procurement Officer, can be used for their intended purpose; provided that the conditions of occupancy and use are established and the responsibilities of the Contractor and the State for maintenance, heat, light, utilities, and insurance are mutually agreed to by the Contractor and the State.
- B. Partial occupancy shall in no way relieve the Contractor of his responsibilities under the Contract.

#### **66. FAILURE TO COMPLETE ON TIME/LIQUIDATED DAMAGES**

- A. Time is an essential element of the Contract and it is important that the work be vigorously prosecuted until completion.
- B. For each day that any work shall remain uncompleted beyond the time(s) specified elsewhere in the Contract, the Contractor shall be liable for liquidated damages in the amount of \$500 per day or as specified in the contract, provided, however, that due account shall be taken of any adjustment of specified completion time(s) for completion of work as granted by approved change orders.
- C. The State will deduct and retain out of the monies due to or become due to the Contractor hereunder the amount of liquidated damages, and in case the amounts due the Contractor are less than the amount of such damages, the Contractor shall be liable to the State for the difference.

#### **67. SUBSTANTIAL COMPLETION AND FINAL INSPECTION**

- A. When the installation is substantially completed, the Contractor shall notify the Procurement Officer that the work will be ready for final inspection and test on a definite date. Sufficient notice shall be given to permit the Procurement Officer to schedule the final inspection with the State's consulting engineer.
- B. On the basis of the inspection if the Procurement Officer and consulting engineer determine that the work is substantially complete and the project can be occupied or used for its intended purpose, the Procurement Officer will establish the date of substantial completion and will state the responsibilities of the State and the Contractor for

### SECTION III- GENERAL CONDITIONS

maintenance, heat, utilities, and insurance.

- C. The Procurement Officer will fix the time within which the Contractor shall complete any remaining items of work which will be indicated on a list (punch list) prepared by the State. If the Contractor fails to complete the remaining items so listed in the time stipulated, the State will have the undisputed right to complete the work and deduct any cost incurred from any monies related under the Contract.

#### 68. **CLEANING-UP**

The Contractor shall at all times keep the construction area, including storage areas used by them, free from accumulations of waste material or rubbish and prior to completion of the work remove any rubbish from the premises and all tools, scaffolding, equipment, and materials not the property of the State. Upon completion of the construction, the Contractor shall leave the work and premises in a clean, neat and workmanlike condition satisfactory to the Procurement Officer.

#### 69. **GUARANTEES (Phase II only)**

The Contractor guarantees for the life of the Contract, commencing on the date fixed by the parties: (normally at Master Lease Program Loan Takedown, unless otherwise noted).

- A. That the work contains no faulty or imperfect material or equipment or any imperfect, careless, or unskilled workmanship.
- B. That all mechanical and electrical equipment, machines, devices, etc., shall be adequate for the use to which they are intended, have been installed in accordance with specifications, all applicable codes and manufacturers recommendations, and shall operate with ordinary care and attention in a satisfactory and efficient manner.
- C. That the Contractor will re-execute, correct, repair, or remove and replace with proper work, without cost to the State, any work found not to be as guaranteed by this Section. The Contractor shall also make good all damages caused to other work or materials in the process of complying with this Section.
- D. That the entire work shall be water-tight and leak-proof.
- E. That the actual adjusted cost avoidance for the life of the Contract will be no less than the guaranteed savings as defined in the Contract.
- F. Guaranteed energy savings as stipulated in the Measurement & Verification section in this IDC.

#### 70. **NOTICE TO STATE FOR LABOR DISPUTES**

- A. Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Procurement Officer.

### SECTION III- GENERAL CONDITIONS

- B. The Contractor agrees to insert the substance of this clause, including this Paragraph B., in any subcontract hereunder as to which a labor dispute may delay the timely performance of this Contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify his next higher tier subcontractor, or the prime Contractor, as the case may be, of all relevant information with respect to such dispute.

#### 71. SCOPE OF PAYMENT

- A. The State agrees to pay the Contractor on the following basis as compensation for the Contractor's services:
  - 1) Total ECM capital cost, as quoted in the Contractor's Final Phase I Report, (Phase II proposal), including engineering feasibility study, preparation of comprehensive energy plan, design, construction documents, construction, training and start-up. This amount is to be payable to the Contractor upon acceptance by the State at 100% completion of the construction phase of the project, and subject to the loan takedown schedule set by the State's Guaranteed Energy Performance Lease Line of Credit. The date the Contractor is paid constitutes the start of the guarantee period. The cost or contract value of any ECMs not operating to the expected performance levels will be the responsibility of the ESCO.
  - 2) Yearly maintenance/service costs as quoted in the Contractor's Final Phase I Report, (Phase II Proposal), for the duration of the contract, and payable by the Owner.
- B. The State's total yearly cost for the repayment of the project capital cost including interest and yearly maintenance costs, cost of M & V, cost of guarantee, and cost of Project manager shall not be greater than the guaranteed energy and energy related savings for the duration of the contract.
- C.
  - 1) Should the recommendations contained in the engineering feasibility study (Phase I) fail to meet the State's objectives for the project (as outlined in Section I and Section III of this RFP), or is deemed unreasonable, unworkable, or cost excessive by the State, the State will have no obligation to pay the Contractor the fee associated with the study.
  - 2) Should the recommendations, including capital cost, yearly maintenance cost, and guaranteed savings, meet or exceed the State's objectives (as outlined in Section I and Section III of this RFP) as determined by the State, and the State elects to proceed with Phase II of the project, the cost of the study shall be included in the Contractor's ECM capital cost, and financed by the State, either through the Contractor or privately. In either case, the payment to the Contractor shall be the same as noted in A1 and A2 above.
  - 3) Should the recommendations contained in the engineering feasibility study/ comprehensive energy efficiency and guaranteed savings program (Phase I study) meet or exceed the State's objectives and all contract requirements as determined by

### SECTION III- GENERAL CONDITIONS

the State and the State, for any reason, does not proceed with the implementation phase (Phase II, design and construction, and maintenance of the ECMs), then the ESCO shall be paid the previously agreed upon cost of the Phase I engineering study. The cost of the study is to be included in the ESCO's Phase I letter of intent upon assignment of each project.

- D. After completion of project phases noted above, and upon demand, the Contractor shall certify to the State in writing that, in accordance with contractual arrangements, suppliers and subcontractors:
  - 1. have been paid from the proceeds of the financing arranged by the Contractor or the State, and
  - 2. no liens have been filed or are pending against the installed equipment.
- E. The State may withhold payment under this Contract if it determines that any part of the contract, including completion of punch list items, has not been completed satisfactorily. A letter notifying the Contractor of the outstanding work will be submitted by the State. Neither payment made to the Contractor nor partial or entire use of the work by the State shall be an acceptance of any work or materials not in accordance with this Contract.
- F. The State has the right to withhold from payments due to the Contractor any amounts the State claims to be owed the State by the Contractor.
- G. In applying for all payments, the Contractor shall submit in addition to the above a certificate that he has paid:
  - 1. all labor to date;
  - 2. all vendors and material suppliers in full for all items received;
  - 3. all subcontractors in full, less the retained amount; and
  - 4. all insurance premiums.
- H. Contractor certifies that all subcontractors scope of work and payments (including the contractor's own subsidiary) were identical to the approved contract scope and costs. If the contractor changed the scope or negotiated, attained and/or paid a lower price to his subcontractors other than what was provided in his approved price proposal, the ESCO shall formally inform the State with such price and/or price change and make proper and prompt compensation to the State or using agency in an equivalent amount.
- I. The State will hold 10% of each monthly payment as retainage. The State would release half the retained amount at substantial completion and the remaining amount within 6 months afterward. This will insure the Contractor's compliance with the contract requirements and the proper closing out of the construction phase of the project.

#### **72. FORCE ACCOUNT WORK (Phase II only)**

- A. When the Contractor is required to perform work as a result of additions or changes to the Contract for which there are no applicable unit prices in the Contract, the Department and Contractor shall attempt to agree to a price for the performance of such work. If an

### SECTION III- GENERAL CONDITIONS

agreement cannot be reached, the Department may require the Contractor to do such work on a force account basis to be compensated in accordance with the following:

1. Labor. For all labor, including design services, and for foremen in direct charge of the specific operations, the Contractor shall receive the actual wages for each and every hour that said persons are actually engaged in such work. The Contractor shall receive the actual costs paid to, or in behalf of, workers by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits or other benefits, when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the work.
2. Materials. For materials accepted by the State and used, the Contractor shall receive the actual cost of such materials delivered on the work, including transportation paid by him (exclusive of machinery rentals as hereinafter set forth).
3. Equipment. For any machinery or special equipment (other than small tools, whether rented or owned), the Contractor shall receive the rates agreed upon in writing before such work is begun, or the Contractor shall receive those rates which may be specified elsewhere in the Contract. For purpose of definition, equipment with a new cost of \$500 or less will be considered small tools.
4. Materials and Supplies Not Incorporated in the Work. For materials and supplies expended in the performance of the work (excluding those required for rented equipment) and approved by the State, the Contractor shall receive the actual cost of such materials and supplies used.
5. Bond, Insurance, and Tax. For bond premiums, property damage, liability, and workmen's compensation insurance premiums, unemployment insurance contributions and social security taxes on the force account work, the Contractor and State shall determine an equitable percent to be applied against the labor cost (premium pay and fringes excluded).
6. Subcontractors. For work done solely by a subcontractor, the subcontractor's cost shall be determined as stipulated in Subparagraphs 1.) through 5.), above. The allowable percentages for combined overhead and profit for the subcontractor shall be as stipulated hereinafter under Subparagraph 8. The Contractor shall be entitled to an allowance of five percent (5%) of the subcontractor's total cost of doing the work.
7. Superintendence. No additional allowance shall be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided.
8. Contractor's Overhead and Profit. The Contractor will be paid overhead and profit for work performed by his own forces as a percentage thereof, at the following scale:

<u>VALUE OF WORK</u>	<u>COMBINED OVERHEAD AND PROFIT</u>
\$0 - \$100,000	15%
Over \$100,000	Negotiated; maximum of 15%

- B. Compensation. The compensation as set forth above shall be received by the Contractor

### **SECTION III- GENERAL CONDITIONS**

as payment in full for the work done on a force account basis in accordance with all other provisions in the Contract respecting payment. At the end of each day, the Contractor's representative and the Procurement Officer shall compare records of the cost of work as ordered on a force account basis.

C. Statements. No payment will be made for work performed on a force account basis until the Contractor furnishes the Procurement Officer duplicate itemized statements of the cost of such force account work detailed as to the following:

1. Name, classification, date, daily hours, total hours, rate, and extension for such laborer, foreman.
2. Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
3. Quantities of materials, prices, and extensions.
4. Transportation of materials.
5. Cost of property damage, liability and workmen's compensation insurance premiums, unemployment insurance contributions, and social security tax.
6. Payments of items under Subparagraphs 3. and 4. above, shall be accompanied by original receipted invoices for materials used and transportation charges. If, however, the materials used in the force account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the original invoices, the statement shall contain or be accompanied by an affidavit of the Contractor which shall certify that such materials were taken from his stock, that the quantity claimed was actually used and that the price and transportation of the material as claimed represent actual cost.

#### **73. DEDUCTIONS FOR UNCORRECTED WORK (Phase II only)**

If the State deems it inexpedient to correct work injured or done not in accordance with the Contract, an equitable deduction from the payment shall be made thereof.

#### **74. CORRECTION OF WORK NOT IN ACCORDANCE WITH CONTRACT (Phase II only)**

- A. The Contractor shall promptly remove from the premises all materials condemned by the State as failing to conform to the Contract, whether incorporated in the Work or not. The Contractor shall promptly replace and re-execute his own work in accordance with the Contract and without expense to the State and shall bear the expense of making good all work of other Contractors destroyed or damaged by such removal or replacement.
- B. If the Contractor does not remove such condemned work and materials within a reasonable time, the State may remove them and may store the materials at the expense of the Contractor. If the Contractor does not pay the expense of such removal, the State may, sell such materials and shall account for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Contractor.

#### **75. RETENTION OF RECORDS**

### SECTION III- GENERAL CONDITIONS

- A. The Contractor shall retain and maintain all records and documents relating to this Contract for three years after final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the procurement officer or designee, at all reasonable times.
- B. The Contractor further agrees to include in all their subcontracts hereunder a provision to the effect that the subcontractor agrees that the State or any of its duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract.

#### 76. EMPLOYEES AND CONSULTANTS

- A. Qualification of Employees: Only personnel thoroughly trained and skilled in the task assigned to them may be employed on any portion of the work. Any employee found to be unskilled or untrained in his work shall be removed from the work. A full time, Maryland certified Engineer shall be assigned to represent the ESCO on each and every project during the Phase I and Phase II of the projects.
- B. Licensed Employees: When Municipal, County, State, or Federal laws require that certain personnel (electricians, plumbers, architects, engineers, etc.) be licensed, then all such personnel employed on the work shall be so licensed.
- C. Quantity of Labor: The Contractor shall employ on the work, at all times, sufficient personnel to complete the work within the time stated in the Contract.
- D. Work Areas. The Contractor shall confine the operations of his employees to the limits as provided by law, ordinance, permits, or direction of the Department.
- E. Methods and Quality:
  - 1. All workmanship shall be of good quality. Whenever the method of the work or manner of procedure is not specifically stated in the contract documents, then it is intended that the best standard practice shall be followed. Recommendations of the manufacturers of approved materials shall be considered as a part of these specifications and all materials shall be applied, installed, connected, erected, used, cleaned and conditioned as so called for thereby. This, however, does not remove any requirement in these specifications to add to the manufacturer's recommendations.
  - 2. All materials shall be accurately assembled, set, etc., and when so required in good construction, shall be true to line, even, square, plumb, level and regularly spaced, coursed, etc. Under no circumstances, either in new or old work shall any material be applied over another which has not been thoroughly cleaned, sanded, or otherwise treated so as not to impair the finish, adhesion, or efficiency of the next applied item.
  - 3. All methods, procedures, and results are subject to the State's approval as to finished result to be obtained.

## SECTION III- GENERAL CONDITIONS

### F. Scheduling:

1. The Contractor shall so schedule the work as to ensure efficient and uninterrupted progress and to hold to an absolute minimum the cutting and patching of new work. All cutting, patching, and digging necessary to the execution of the work is included.
2. The Contractor shall so schedule the scope of work (including design, construction, maintenance, training, etc.) that each installation or portion of the work shall be properly coordinated with all other portions of the work as required for a complete installation, all according to accepted good design and construction practice, and in accordance with the project schedule.

G. Superintendent: The Contractor shall keep on the project site, at all times during its progress, a competent, English-speaking Superintendent and any necessary assistants, all approved by the Department prior to commencement of the work. The Contractor shall submit in writing to the Department the name of the person it intends to employ as superintendent for the execution of this Contract with a statement of the proposed superintendent's qualifications. This data will be reviewed by the Department and an approval or rejection given in writing. Persons who have previously provided unsatisfactory work executed for the State of Maryland, or who are without proper qualifications, will not be approved. Should it be necessary to change the Superintendent, this procedure will be repeated. A single Superintendent will be permitted to superintend two or more jobs located at the same institution or close to each other only when approved by the Department in writing. The Superintendent shall represent the Contractor. All directions given to the Superintendent shall be as binding as if given to the Contractor. Directions shall be confirmed in writing on written request from the contractor. Should the Superintendent be complained of by the Department for cause, he shall be removed from the work and a new Superintendent obtained and approved as described above.

H. Discipline: The Contractor shall at all times enforce strict discipline and good order among their employees and shall not employ or permit to remain on the work any unfit person. They shall enforce all instructions relative to use of water, heat, power, no smoking, and control and use of fires as required by law, and the State. Employees must not be allowed to loiter on the premises before or after working hours.

I. Employee Safety: The Contractor shall designate a responsible member of his organization, on the work, whose duty it shall be, in addition to his other duties, to prevent accidents and to enforce the standards required under the Contract. The name and position of the person so designated shall be reported to the Department by the Contractor at the commencement of the work.

## 77. NON-DISCRIMINATION IN EMPLOYMENT

### A. Contractor agrees:

1. not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry or disability of a qualified individual with a disability;
2. to include a provision similar to subsection 1), above, in any subcontract except a

### **SECTION III- GENERAL CONDITIONS**

subcontract for standard commercial supplies or raw materials; and

3. to post and to cause subcontractors to post, in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this subsection A.
- B. Contractor shall be subject to and shall comply with all other requirements of Section 13-219 of the State Finance and Procurement Article of the Annotated Code of Maryland.
- C. Contractor shall comply with all other applicable federal, State, and local laws, regulations and ordinances respecting illegal discrimination and civil rights.
- D. The Contractor, subcontractors, and agents of both insofar as possible, shall secure labor through the Maryland Job Service of the Maryland Department of Economic and Employment Development, except where the Contractor has entered into a collective bargaining agreement under which labor is to be provided by the union. In that case, the Contractor is not required to conform to these provisions unless the Contractor and the union arrange with the Maryland Job Service for referral of such labor as they may mutually agree shall be referred. The Contractor shall be the sole judge of the competency or fitness and for satisfactory service of any laborer referred to him by the Maryland Job Service.

#### **78. HIRING AGREEMENT**

By submitting a bid or proposal in response to this solicitation, the Bidder/Offeror agrees to execute and comply with the enclosed Maryland Department of Human Resources (DHR) Hiring Agreement (Attachment 7). The Hiring Agreement is to be executed by the Bidder/Offeror and delivered to the Procurement Officer within ten days following receipt of Notice by the Bidder/Offeror that it is being recommended for contract award. The Hiring Agreement will become effective concurrently with the award of the contract. The Hiring Agreement provides that the Contractor and DHR will work cooperatively to promote hiring by the Contractor of qualified Maryland Temporary Cash Assistance customers to fill job openings resulting from this procurement, in accordance with 13-224, State Finance and Procurement Article.

#### **79. SUBCONTRACTS**

- A. The Contractor shall, as soon as practicable and before the execution of the Contract, notify the Department in writing, of the name of subcontractors proposed for the principal parts of the work and for such others as the State may direct and shall not employ any that the Department may object to as incompetent or unfit.
- B. The Contractor agrees that the Contractor is as fully responsible to the State for the acts and omissions of their subcontractors at any time and of persons either directly employed by them, as it is for the acts and omissions of persons directly employed by the subcontractors.
- C. Nothing contained in the contract documents shall create any contractual relation between any subcontractor and the State, and nothing in the contract documents is intended to

### **SECTION III- GENERAL CONDITIONS**

make the subcontractor a beneficiary of the Contract between the State and the Contractor.

#### **80. RELATION OF CONTRACTOR AND SUBCONTRACTOR**

- A. The Contractor agrees to bind every subcontractor and will see that every subcontractor agrees to be bound by the terms of the Contract documents, as far as applicable to its work, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the Department.
- B. The Contractor agrees and shall incorporate by reference or otherwise include these General Conditions and the following provisions in all subcontracts and supply contracts applicable to the work. Subcontractor agrees to be bound to the Contractor by the terms of the Agreement, General Conditions, Drawings and Specifications, and to assume toward them all obligations and responsibilities that they, by those documents, assumes toward the State.
- C. The subcontractor agrees, upon completion of their work, to promptly pay all labor, material suppliers, vendors, subcontractors and others, to permit simultaneous final payment by the Contractor.
- D. The Contractor and the subcontractor agree that nothing in the Contract shall create any obligation on the part of the State to pay to or to see to the payment of any sums to any subcontractor.

#### **81. CONSTRUCTION SAFETY AND HEALTH STANDARDS (Phase II only)**

It is a condition of this Contract, and shall be made a condition of each subcontract entered into pursuant to this Contract, that the Contractor and any subcontractor shall not require any laborer or mechanic employed in performance of this Contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to their health or safety, as determined under construction safety and health standards, laws and regulations of the locality in which the work is done, the State, and the Federal government.

#### **82. MANDATORY CONTRACTUAL TERMS**

By submitting an offer in response to this RFP, offerors, if selected for award, shall be deemed to have accepted the terms of this RFP and the Contract--Attachment A. Any exceptions to the RFP or the Contract must be clearly identified in the Executive Summary of the Technical Proposal. A proposal that takes exception to these terms may be rejected.

#### **83. VERIFICATION OF REGISTRATION AND TAX PAYMENT**

Before a corporation can do business in the State of Maryland it must be registered with the Department of Assessments and Taxation, State Office Building, Room 803, 301 West Preston Street, Baltimore Maryland 21201. It is strongly recommended that any potential offeror complete registration prior to the due date for receipt of proposals. An offeror's failure to complete registration with the Department of Assessments and Taxation may disqualify an otherwise successful offeror from final consideration and recommendation for

### SECTION III- GENERAL CONDITIONS

contract award.

#### 84. BID PROPOSAL AFFIDAVIT

Proposals submitted by offerors must be accompanied by a completed Bid/Proposal Affidavit. A copy of this Affidavit is included as Attachment B of this RFP.

#### 85. STATE ETHICS LAW

The State Ethics Law, State Government Article §15-508, applies to persons that are involved in the drafting of specifications. In general, and with certain exceptions, such persons are prohibited from participating in the implementation of those specifications as a prime or subcontractor. The State Ethics Law shall apply to contracts to Contractors under the RFP. Please see §15-508 for further detail.

#### 86. ELECTRONIC FUNDS TRANSFER

##### **Payments to Contractors by Electronic Funds Transfer (EFT):**

(Pursuant to: Section 7-227.1, State Finance and Procurement Article, Maryland Code;COMAR 25.03.02.02.). Every solicitation for a contract expected to exceed \$200,000 that requires Board of Public Works approval must include the following clause:

##### **PAYMENT TO CONTRACTORS BY ELECTRONIC FUND TRANSFER (EFT): (For bids over \$200,000)**

**By submitting a response to this solicitation, the Bidder/Offeror agrees to accept payments by electronic funds transfer unless the State Comptroller's Office grants an exemption. The selected Bidder/Offeror shall register using the attached form COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form and must include the business identification information as stated on the form and include the reason for the exemption.**

#### 87. CONTINGENCY WORK

All work under the contingency part of the contract shall be evaluated and handled in a similar manner as the item 27 of this section, including the acceptable rated of contractor and sub-contractor allowed over head and profit.

#### 88. COMMERCIAL NONDISCRIMINATION POLICY

- A) As a condition of entering into this Agreement, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, martial status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of

### **SECTION III- GENERAL CONDITIONS**

subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

- B) As a condition of entering into this Agreement, upon the Maryland Human Relations Commission's request, and only after the firing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that is requested by the State. Contractor understands that violation of this clause is a material breach of this Agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

### **89. PREVAILING WAGE RATES**

- A. All contracts in the amount of \$500,000 or more shall be subject to the provisions of 17-201, et seq., of SF&P and COMAR 21.11.11, respecting prevailing wages. Where an original contract is in an amount less than \$500,000, this section shall not apply, even where subsequent change orders increase the total contract to be in excess of \$500,000 or more are attached to the specifications. Federal wage rates shall be in effect where applicable.
- B. When prevailing wage rates apply, the Contractor shall submit a copy of payroll records and the payroll records of each of his Subcontractors to the Department of Labor, Licensing and Regulation, Division of Labor and Industry, 1100 North Eutaw Street, Maryland 21201. The Contractor shall also provide to the DGS Inspector a copy of the Contractor's and its subcontractor(s) payroll records. These payroll records must be submitted within two weeks after each payroll period, and shall contain the following employee information: name, address and social security number, work classifications, hours straight time, and overtime worked each day, total hours worked, rate of pay and gross amount earned. The Contractor shall be responsible for the submission of all subcontractors' payroll records covering work performed directly at the work site. Each copy of the payroll records shall be accompanied by a statement signed by the Contractor or the Subcontractor indicating that the payroll records are correct, that the wage rates contained therein are not less than those established by the Commissioner as set forth in the contract, that the classification set forth for each workman or apprentice conforms with the work performed and that the Contractor or the Subcontractor has complied with the

### **SECTION III- GENERAL CONDITIONS**

provisions of this section. In the event of any conflict between the Section and Title 17, Subtitle 2 of SF&P, or regulations adopted there under, the provisions of Title 17, Subtitle 2 or the regulations will prevail.

#### **90. PROMPT PAYMENT OF SUBCONTRACTORS (COMAR 21.07.02.05-2)**

- A. This contract and all subcontracts issued under this contract are subject to the provisions of State Finance and Procurement Article, §15-226, Annotated Code of Maryland, and COMAR 21.10.08. In §§A---D, the terms “undisputed amount”, “prime Contractor”, “Contractor”, and “subcontractor” have the meanings stated in COMAR 21.10.08.01.
- B. A Contractor shall promptly pay its subcontractors an undisputed amount to which a subcontractor is entitled for work performed under this contract within 10 days after the Contractor receives a progress payment or final payment for work under this contract.
- C. If a Contractor fails to make payment within the period prescribed in §B, a subcontractor may request a remedy in accordance with COMAR 21.10.08.
- D. A Contractor shall include in its subcontracts for work under this contract, wording that incorporates the provisions, duties, and obligations of §§A---D, State Finance and Procurement Article, §15-226, Annotated Code of Maryland, and COMAR 21.10.08.

## SECTION IV- SCOPE OF WORK

### 1. GENERAL REQUIREMENTS

- A. Under this approach, Phase I of each identified project, will be competitively bid between all pre-qualified ESCOs, to conduct a detailed energy audit, technical study and preliminary design to identify cost effective solutions to achieve a minimum of twenty percent (20%) reduction from the baseline in annual energy usage and a maximum project payback period of 15 years, while maintaining or enhancing existing comfort levels. Note: The 20% annual energy reduction from the baseline may be revised at the State's/Agency's discretion if the project can be accomplished within a 15-year payback period. Phase II project must be calculated on a 13-year term to allow for the fluctuation in interest rate during the construction phase.

Upon the State's approval of the recommendations of a Phase II proposal, including a determination of fair and reasonable price for capital and yearly maintenance costs, the ESCO will implement the comprehensive energy efficiency and guaranteed savings program, provide the funds necessary to cover all of the costs associated with the program and provide a guarantee of the level of energy and energy related operational cost avoidance to be achieved throughout the payback period.

- B. The State of Maryland is issuing this Request For Proposals (RFP) to establish a list of qualified ESCOs to compete on projects to:
1. Provide all necessary studies and analysis in the form of a detailed energy audit and engineering feasibility study (Phase I);
  2. Provide comprehensive energy efficiency and guaranteed savings program (Phase II) at a cost determined to be fair and reasonable by the State.
  3. Develop and implement a plan to reduce energy and energy related maintenance costs;
  4. After the conclusion of feasibility study, but before the start of design/construction phase, (Phase II), the ESCO shall provide acceptable performance measurements in accordance with International Performance Measurement and Verification Protocol, IPMVP 2001; see section V, Performance Measure and Verification.
  5. Furnish the design and installation of Energy Conservation Measures (ECMs) that are consistent with State facility master plans and future building renovation plans as specified and provided by the Using Agency. ECM's may include, but are not limited to, the replacement or repair of existing HVAC controls, HVAC equipment, chillers, boilers, and auxiliary equipment, computerized Energy Management Systems, and retrofit of existing lighting with optimum designed energy efficient lamps and electronic ballasts (Phase II);
  6. Provide training for the facility operations and maintenance staff (Phase II);
  7. Provide maintenance and service and/or replacement of everything installed under this contract for the duration of the contract period at a cost determined to be fair and reasonable by the State (Phase II); and
  8. Provide monitoring of energy use and costs, and an acceptable guarantee that the total program costs shall be one hundred percent (100%) covered by the program

## SECTION IV- SCOPE OF WORK

energy and energy related operating and maintenance savings (Phase II).

- C. The State intends to solicit quotations from all qualified ESCOs selected under this IDC for Phase I for each project. Once a Phase I contract is awarded, the successful ESCO will complete the Feasibility Study/Development of Guaranteed Savings program (Phase I) within 180 calendar days following the Notice to Proceed. Upon approval of the Feasibility Study/Guaranteed Savings Program by the State and the Board of Public Works, the successful ESCO will have up to 365 calendar days to complete the design and construction of work, unless otherwise approved by the procurement officer. The offeror performing an acceptable Phase I study will be the only firm invited to perform the Phase II work implementing the Phase I plan. The Firm would be paid for the Phase I study only (1) if the Firm performs Phase II, in which case the costs of their Phase I study would be recovered under Phase II compensation, or (2) if DGS approves the Phase I study but the Using Agency for any reason elects not to implement it, in which case the Using Agency would be required to pay for the Phase I study out of the Agency's funds, subject to appropriation, at the price agreed to in the Phase I contract.

The anticipated selection of ESCOs under this agreement will be within 120 days of the receipt of technical proposals.

- D. The ESCO shall, for each project:

- 1) Provide all necessary study, investigation, design, construction, training, monitoring and verification, and maintenance for the complete installation of ECMs under the conditions required in this RFP.
- 2) Provide complete construction drawings, specifications, and equipment submittals for review and approval by the State of Maryland.
- 3) Provide optional project financing, directly to the State that will allow the State of Maryland to pay all costs out of the savings resulting from the installation of the proposed system. Any third party financing arrangements must be made between the ESCO and the third party.
- 4) Provide a program that will result in guaranteed energy cost avoidance, sufficient to finance the cost of the program over the term of the contract. Program costs include capital, maintenance services, administrative and other costs identified herein.
- 5) Study all possible energy conservation measures, and provide reasoning for not including any of the possible ECM.
- 6) Provide Certificate of Insurance, performance bond or irrevocable letter of credit prior to any funding of the projects.
- 7) Provide training to facility maintenance and operations personnel. Training shall address the purpose, operation and maintenance of the equipment and systems installed throughout the project.
- 8) Provide monitoring, measurement and verification of energy and cost avoidance throughout the contract period. This may require measurements to be recorded during the Phase I study phase.

## SECTION IV- SCOPE OF WORK

- 9) Provide preventive maintenance and service, up to and including full replacement, for all work installed, throughout the contract period.
- E. All engineering and design work shall be performed in accordance with the DGS Procedures Manual for Professional Services, July 2003 ed., September 2007 update (or latest), unless noted otherwise herein.
- F. All energy audits, feasibility studies, plans and specifications shall be prepared under the supervision of Professional Engineers, licensed in the State of Maryland at the time of ESCO's project assignment. A Certified Energy Manager is required on each project.
- G. All available construction documents, including as-built drawings of the facility, shall be made available to ESCO upon assignment of a project. The State does not guarantee the accuracy or completeness of these documents. The ESCO shall consult with the facility maintenance and operations staff and DGS, as to any conditions which might exist not shown in the drawings. The selected ESCO shall be responsible for verifying the accuracy of the information provided by the State.
- H. This RFP is a "Performance Specification" and not a "Design Specification."

## 2. SPECIFIC REQUIREMENTS

### A. Method of Project Assignment

- 1) Agencies interested in an Energy Performance Contract shall coordinate with DGS and MEA, to gather pertinent data and establish performance goals.
- 2) All Phase I projects will be awarded based on competitive proposals for Phase I of an EPC by each ESCO.
- 3) All qualified ESCOs under this IDC will receive written notification of the intent of an agency to enter into an EPC approximately 10 working days prior to the initial meeting with the agency, DGS and MEA representatives.
- 4) The purpose of the initial meeting is to introduce the goals of the agency to the ESCOs, as well as to discuss the facility mission and operating patterns. ESCOs will be notified of the date of an initial site visit at this meeting. Subsequent site visits may be scheduled at the ESCOs' request, subject to the discretion of the State.
- 5) All ESCOs are expected to attend the kick-off and any subsequent meetings. Meetings for individual firms will not be allowed.
- 6) Each ESCO will have 30 days after the initial site visit to submit a proposal for Phase I services to the agency. At the discretion of the State, a brief extension may be granted for submitting the Phase I proposal. The ESCO agrees that its Phase II project will, at a minimum, meet the level and scope defined in the Phase I proposal, in response to the evaluation factors listed below.
- 7) Each proposal will be scored on the criteria listed below. An ESCO will be evaluated based on the proposal with the highest combined score:
  - (a) First year guaranteed Cost Avoidance for the facility for a 13 year term

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with an amortization at an interest rate determined by the State. (This may include energy and operational savings. Operational savings must be agreed to by the State, in order to be included.)

- (b) Guaranteed percentage energy reduction against a baseline defined by the State.
  - (c) Proposed list of ECM's to be included in the project. This can be a generalized list. However, major equipment upgrades or replacements should be included specifically. List first year energy and cost avoidance, estimated cost, and simple payback.
  - (d) Proposed overhead and profit rates on both subcontract prices and internal ESCO prices.
  - (e) Proposal for renewable and sustainable technologies as an energy conservation measure. This must include specific applications at the proposed facility. No points will be given for an ESCO presenting a cursory look at the potential application of such technologies.
  - (f) Proposed Phase I.
  - (g) Cost of the Phase I study (not to exceed \$250,000).
  - (h) Proposed method of Guaranty in accordance with Section IV.C.2.
- 8) Once an ESCO successfully completes Phase I of an assigned project, if Phase I meets the State's objectives, and if the State elects to proceed with Phase II, the same ESCO will implement the energy efficiency program under Phase II. The Phase II scope of work, capital cost, guaranteed savings and yearly maintenance costs will require final contract approval by the Board of Public Works.
- B. **Phase I:** For each assigned project, ESCO shall develop the proposed comprehensive energy efficiency and guaranteed savings program. The objective shall be to identify technical solutions in order to maximize energy and cost savings and provide a definitive estimate of costs and savings resulting from the proposed energy conservation measures. Upon approval of this phase of the project, the ESCO will guarantee all identified costs and savings. A project must meet minimum energy reduction requirements, meet minimum expectations of equipment replacement, acceptable costs, and be fully funded with guaranteed energy savings to proceed to Phase II.
- 1) Conduct a comprehensive energy audit, a detailed engineering feasibility study of the energy and utility systems serving the facility, and effectively analyze all existing systems, equipment, operations and utility costs. Identify technical solutions in order to maximize energy and cost savings as well as operational and maintenance savings. (Operational and maintenance savings must be clearly defined by the agency and the States' project manager. Facility labor costs savings associated with all upgrades may only be included by approval from the agency and project manager.) Further, provide a definitive estimate of all costs and savings expected to

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result from the proposed energy conservation measures. The ESCO shall consult utility and fuel supply companies prior to effectively conducting analysis of existing systems and utility costs. The ESCO shall also field verify existing conditions to accurately design and locate the installation of new equipment, retrofits or expansion of existing systems.

- 2) Identify, recommend and provide potential Energy Conservation Measures (ECMs) for the facility. ECMs must be designed using a system-wide approach, for the optimization of building operations. If a type of light fixture or lighting system is to be upgraded, it should be upgraded throughout the facility. If a type of mechanical system is to be upgraded, it should be upgraded throughout the facility. If the Building Automation System is to be upgraded, the new system should be implemented throughout the facility, replacing any other BAS entirely. Additionally, mechanical systems to be upgraded are not to be upgraded on a piecemeal basis. In other words, if a chiller is to be replaced, all associated components are to be replaced with it, including pumps, valves, instrumentation, etc.
- 3) Identify and quantify deferred maintenance items that qualify as energy cost reduction measures to be included in the project. Provide comprehensive technical analysis including but not limited to: building envelope (roofing, windows, glass, walls, insulation, etc.) automatic temperature control systems, HVAC and HVAC controls, electrical systems, energy efficient lighting retrofit, chiller and boiler operation, including distribution systems, ductwork cleaning, and coils. All systems must be evaluated and supporting documentation provided regardless of inclusion in the project. Items selected to be included in the project shall meet the requirements of the RFP and support any Master Plan for the facility.
- 4) Identify and evaluate water conservation measures.
- 5) Assess the feasibility of the replacement or upgrade of electrical, steam, and natural gas distribution systems.
- 6) Provide detailed plan to install sub-metering for gas, electric, water, etc. in all buildings to measure savings. Include cost and description of such equipment. Provide plan to document assumptions used for baseline creation. This may require the installation of sub-meters or data loggers during the Phase I study portion.
- 7) Assess the feasibility and implement plans, if approved, for new energy management systems and automatic controls.
- 8) Assess the feasibility of distributed generation, including economic benefits from utility rebates and/or participation in demand side management programs.
- 9) Assess the feasibility of renewable and/or innovative technology applications. The Offerors objective shall be to identify technical solutions in order to maximize energy savings.

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- 10) Ensure that the project plan conforms to all requirements of applicable utility energy conservation rebate incentive programs, in order to minimize cost and payback period.
- 11) Provide itemized costs for the following:
  - (a) Detailed total fee for engineering and design
  - (b) Detailed total cost of construction period interest
  - (c) Detailed total Material and equipment costs
  - (d) Detailed total Labor costs
  - (e) Funding interest rate
  - (f) Cost of the study
  - (g) Cost of the guarantee.
- 12) Provide a project proforma to document all project costs on an annual basis, for each year of the project. The costs of financing the project shall be included. The total project costs shall be amortized over the term of the project. The following costs shall be itemized:
  - (a) Energy savings (dollars)
  - (b) Operational and maintenance savings (dollars)
  - (c) Water savings (dollars)
  - (d) Debt service, including SALP repayments
  - (e) Maintenance costs
  - (f) Training and M&V costs
  - (g) DGS construction management services and annual monitoring and verification costs (if applicable).
- 13) Upon receipt of the completed Phase I study by the State:
  - (a) Should the recommendations contained in the study fail to meet the State's objective for the project, or is deemed unreasonable, unworkable, or cost excessive by the State, the State shall have no obligation to compensate the ESCO for preparation of the study.
  - (b) Should the recommendations contained in the study meet or exceed the State's objectives and all contract requirements and the State contracts for implementation (Phase II), the cost of the Phase 1 study shall be included in the project capital cost financed by the State.
  - (c) Should the recommendations contained in the study meet or exceed the State's objectives and all contract requirements and the State, for any reason other than those in (a) above, elects not to proceed with implementation (Phase II), the ESCO shall be paid the previously agreed upon cost of the Phase I study.
- 14) As part of Phase I, and prior to submission by the State to the Board of Public Works (BPW) for approval of Phase II, the ESCO shall prepare a Phase II Proposal specifying the ECM recommendations approved in Phase I, including but not limited to the following:
  - (a) List of all subcontractors and responsibilities and a list of the project team if it is different from the response to the IDC solicitation.
  - (b) Floor plans identifying location and arrangement of major equipment

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and systems (35% CDs in accordance with the Department of General Services Procedure Manual for Professional Services, July 2003 ed., September 2007 update (or latest).

- (c) Schematic diagrams, including single line piping and ductwork diagrams for all mechanical and electrical equipment.
- (d) Manufacturers' catalogue sheets for major equipment, including boilers, chillers, cooling towers, generators, air handling units, plumbing, and lighting systems.
- (e) Block Load calculations, based on existing building parameters, supporting the selection of major HVAC equipment and new or renovated systems included in the project. Existing occupancy and lighting densities shall be verified through field surveys. Most current ASHRAE ventilation standard shall be used to size primary heating and cooling equipment.
- (f) Calculations and methodology of all energy savings supporting the energy guarantee; savings/year to be dollar based on utility time-of-day rates and estimated energy and demand unit reductions.
- (g) Preliminary design specifications for all major components and systems, including but not limited to:
  - (i) Cooling System:

The ESCO shall provide a schematic diagram of the existing and the proposed cooling system. The schematic diagram of the existing system shall indicate location and arrangement of major existing equipment and shall indicate ratings and performance parameters (e.g. flow rates, temperatures, and heat transfer rates), and sizes. Any unique control requirements should be noted. Include recommendations about the acceptability of the performance of the associated equipment to remain in service. Recommendations should include discussion of: compressors, expansion tanks, air separators, insulation, valves, piping, or any part of the associated distribution system.. The schematic diagram of the proposed cooling system shall provide the performance ratings and parameters of the new equipment, as well as any new appurtenances such as valves, flow meters, temperature sensors, etc. The equipment specifications for the new equipment to be installed in the cooling system shall provide details including, but not limited to, the following:

- (aa) Chiller:
  - Nominal capacity (tons) at specified entering and discharge evaporator temperatures
  - Nominal design efficiency at nominal capacity (kW/ton)
  - Refrigerant type
  - Fluid (water, glycol)
  - Evaporator entering and discharge temperatures
  - Condenser entering and discharge Temperatures
  - Electrical Characteristics (HP, Phase, Volts, Hz)
  - Compressor type (reciprocating, centrifugal, rotary screw)

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- Capacity control method
- Electrical characteristics (HP, volts, phase, HZ)
- List of Acceptable Manufacturers

(bb) Cooling Tower:

- Nominal duty (tons)
- Fluid (water, glycol)
- Entering and leaving fluid temperatures
- Ambient air temperature (DB and WB)
- Electrical characteristics (HP, volts, phase, HZ)
- List of Acceptable Manufacturers

(cc) Pump:

- Type (horizontal split case, end suction, etc.)
- Capacity (GPM)
- Minimum NPSH
- RPM
- Minimum operating efficiency
- Mounting(base, inertia pad, vibration isolators)
- Electrical characteristics (HP, volts, phase, HZ)
- List of Acceptable Manufacturers

(ii) Heating System:

The ESCO shall provide a schematic diagram of the existing and the proposed heating system. The schematic diagram of the existing system shall indicate location and arrangement of major existing equipment and shall indicate ratings and performance parameters (e.g. flow rates, temperatures, and heat transfer rates), and sizes. Any unique control requirements should be noted. Include recommendations about the acceptability of the performance of the associated equipment to remain in service. Recommendations should include discussion of: expansion tanks, air separators, insulation, valves, piping, or any part of the associated distribution system. The schematic diagram of the proposed heating system shall provide the performance ratings and parameters of the new equipment, as well as any new appurtenances such as valves, flow meters, temperature sensors, etc. The equipment specifications for the new equipment to be installed in the heating system shall provide details including, but not limited to, the following: The equipment specifications for the new equipment to be installed in the Heating System shall provide details including, but not limited to, the following:

(aa) Boiler:

- Fuel (Primary/Secondary, if applicable)
- Output Rating (MBH)
- Maximum Firing Rate (scfh)
- Operating Pressure or GPM
- Boiler Type (Cast-Iron Sectional, Firetube, etc.)

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- Electrical Characteristics (HP, Phase, Volts, Hz)

(bb) Heat Exchanger:

- Fluid Types
- Flow Rates
- Entering Temperature for Both Fluids
- Leaving Temperature for Both Fluids
- Heat Exchanger Type (Plate & Frame, Shell & Tube, etc.)
- List of Acceptable Manufacturers

(cc) Pump:

- Type (horizontal split case, end suction, etc.)
- Capacity (GPM)
- Minimum NPSH
- RPM
- Minimum operating efficiency
- Mounting(base, inertia pad, vibration isolators)
- Electrical characteristics (HP, volts, phase, HZ)
- List of Acceptable Manufacturers

(iii) HVAC System:

The ESCO shall provide a schematic diagram of the existing and the proposed HVAC System. The schematic diagram of the existing system shall include all the major existing equipment, along with their performance parameters, duct sizes, flow rates, etc. Any unique control requirements should be noted as well as comments made about the acceptability of the performance of the equipment to remain such as VAV Boxes, Coils, Diffusers, Dampers, Ductwork, Insulation, etc. The schematic diagram of the proposed Heating System shall provide the performance parameters of the new equipment, as well as any new appurtenances such as dampers, flow sensors, temperature sensors, etc.

The equipment specifications for the new equipment to be installed in the HVAC System shall provide details including, but not limited to, the following:

(aa) Air Handling Unit:

- ▶ Airflow rate (CFM)
- ▶ External Static Pressure (in. WG)
- ▶ Total Cooling Capacity
- ▶ Sensible Cooling Capacity

(bb) Sensible Heating Capacity

- ▶ Entering Air Temperature
- ▶ Leaving Air Temperature
- ▶ Design Space Temperature

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- ▶ Design Outdoor Air Temperature
- ▶ Minimum Outdoor Air (%)
- ▶ Electrical Characteristics (HP, BHP, RPM, Phase, Volts, Hz)
- ▶ List of Acceptable Manufacturers

(cc) Exhaust Fan

- ▶ Airflow Capacity
- ▶ Fan RPM
- ▶ Electrical Characteristics (HP, BHP, Phase, Volts, Hz)
- ▶ List of Acceptable Manufacturers

(iv) Lighting:

The ESCO shall conduct a detailed room-by-room survey to identify existing fixtures, lamps ballasts and wiring arrangements. Where lighting renovations include alterations to existing configurations, zonal calculations shall be provided. ESCO shall evaluate existing conditions, including illumination levels, and recommend new lighting designs, where applicable. All lighting improvement shall be consistent with the building interior design and to insure that the new upgrade is harmonized with the existing lighting fixture design. It is unacceptable to replace some fixtures or parts of fixtures in the same room or hall, while leaving other, older fixtures untouched. ESCO shall request specific approval from the State if unable to comply with the preceding.

(v) Controls:

The ESCO shall provide a schematic diagram of the existing and the proposed controls system, Building Automation System (BAS), Facilities Management System (FMS), and any other controls. Any such system replacement or upgrade shall include the entirety of the building or facility.

At this Phase, the ESCO shall provide a complete detailed listing of all equipment systems to be connected to the controls system. In addition, the ESCO shall provide a detailed listing of any equipment systems planned to be excluded from the controls system. All equipment systems to be connected to the control system are to be connected in their entirety, and any overlooked or added instruments are to be included/ added. All relevant system parameters are to be monitored by the system, including but not limited to:

- Temperatures (zone, outdoor, air, water, and other working fluids)
- Flow rates (air, water, and other working fluids)
- Equipment Status (on/off, enable/disable, alarm)
- Alarm conditions
- Analog control and status signals (valves, dampers, VFDs)
- System modes

Any control points not specifically excluded are assumed to be included. At this Phase, the ESCO shall provide a sample of the

#### **SECTION IV- SCOPE OF WORK**

User Interface and graphics for the controls system, indicating the level of detail available to the End User. The intention of this section is to indicate that all HVAC equipment for a building be operable through a single controls system from a central location.

- (h) Equipment warranty for all ESCO furnished equipment for life of payback period. ESCO furnished equipment warranted by ESCO shall be serviced by ESCO.
- (i) CPM schedule of Phase II work, including any outages necessary.
- (j) Commissioning methodology.
- (k) Description of maintenance services, including but not limited to a detailed list of all equipment installed by the ESCO, type of service to be performed, specific cost of services, frequency of service, records of service and date performed and ESCO response time for each piece of equipment or system involved. Identify each entity that will be providing work. Any existing maintenance contracts to be consolidated into ESCO provided maintenance must be included for review by DGS or the Using Agency. It is the responsibility of the ESCO to ensure that all existing services currently provided under existing contracts is included in the list of services. The ESCO proposed contract for services must also be included. The ESCO shall be responsible for maintaining all work installed under this contract, up to and including full replacement, throughout the contract term.
- (l) Detailed capital cost estimate breakdown, by ECM, including:
  - (i) All subcontractors quotes
  - (ii) Detailed engineering fees
  - (iii) Construction labor
  - (iv) Materials
  - (v) Major equipment cost
  - (vi) Construction cost estimate:
    - (aa) Demolition Costs:
    - (bb) New Work listed by system Cost, including but not limited to:
      - Central cooling system, central heating system, cooling and heating distribution systems (HVAC)
      - Automatic temperature controls.
    - (cc) To verify that the capital cost estimate is fair and reasonable, the State will, by whatever method it considers reasonable and appropriate, secure an independent estimate. ESCO ongoing training, maintenance, and energy guarantee cost (cost of the surety instrument) are considered non-capital costs by the State, and shall not be included in capital financing. Costs shall be paid annually by Using Agency and shall be included in the

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project's overall cash flow. Labor costs shall be based on Prevailing Wage Rates, as issued by Maryland Department of Labor, Licensing & Regulation. All major sub-contractors (mechanical, electrical, ATC, etc.) must be contracted directly to the ESCO.

- Engineering cost breakdown: disciplines, hours per discipline, hourly rates, OH, profit, etc.
- Identification and inclusion of an on-line monitoring system (capital costs and annual fees).
- Baseline methodology and methodology of calculation of guaranteed energy savings. All energy savings to be based on time-of-day rates and are to be quoted in dollars/yr; energy unit costs shall be current rates or future rates, whichever is greater. Baseline shall include verification occupancy schedules, temperature set points, equipment runtimes, lighting burn times, utility rates of natural gas, electricity, fuel oil, water and sewer charges, as applicable.

(m) All proposals to replace major equipment (boiler/chiller/AHU, etc.) shall be based on a whole system. Proposal to replace just the major equipment, without the associated parts (i.e. controls, piping, pump, filter, etc.) shall deem the proposal unacceptable.

C. **Phase II:** For each awarded project, the Contractor shall implement the comprehensive energy efficiency and guaranteed savings program, which shall include:

- 1) Final Design and Specifications. Before installation of the proposed ECMs, the ESCO shall prepare detailed construction plans and specifications for the installation of all equipment and systems proposed under Phase I. The plans and specifications shall be prepared in accordance with the DGS Procedures Manual for Professional Services, July 2003 ed., September 2007 update (or latest), unless noted otherwise herein., and shall include, but not be limited to the following:
  - (a) A critical path method (CPM) diagram shall be submitted within 14 days of the execution of the Phase 2 contract. The CPM diagram shall outline activities for the first 90 days of construction. Include a skeleton diagram for the remainder of the work with the preliminary diagram. This preliminary diagram must be approved prior to the first requisition being processed. Include each significant construction activity. Coordinate each activity with other activities and schedule each construction activity in the proper sequence.
  - (b) Site plans and floor plans showing equipment location, ductwork and piping routing, and connections to existing systems. Also include valves, fittings, instrumentation, utility meter locations, and electrical connections. Include electrical wiring schematics, wire and conduit sizes. Include plumbing isometric diagrams and drawings showing connections to all HVAC equipment.

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- (c) Automatic temperature control (ATC) sequence of operations, logic and wiring -diagrams.
  - (d) Equipment schedules, including acceptable manufacturers, model numbers, ratings and operating characteristics.
  - (e) Construction specifications indicating material, sizes, and thicknesses being used in construction components and equipment components, pressure and temperature ratings of system components, national standards or national laboratory testing standards being met (NFPA, ASHRAE, ASME, UL, NEC, ASTM, etc.), methods of installation, electrical ratings of electrical components, and any special requirements relating to this installation
  - (f) A complete description of any modifications to existing HVAC, electrical or plumbing systems.
  - (g) Lighting retrofit plans and specifications.
  - (h) Shop drawings, submitted in accordance with Section III, General Conditions, paragraph 21 of this RFP. All submittals must be approved by DGS or the Using Agency, prior to ordering any material. ESCO shall allow three weeks for DGS or Using Agency review.
  - (i) 95% and 100% construction documents, prepared in accordance with the DGS Procedures Manual for Professional Services, July 2003 ed., September 2007 update (or latest), unless noted otherwise herein. Allow Three week turnaround for DGS review. All drawings must receive written approval by DGS or the Using Agency prior to initiation of construction.
- 2) Execution shall include but not be limited to the following:
- (a) Furnishing and installation of all equipment and accessories in accordance with the requirements of this RFP (including Section III- General Conditions), and the ESCO's approved Phase II proposal.
  - (b) Schedule of values, clearly identifying and describing dates, items, and scheduled percent of project completion (required for State progress payment approval).
  - (c) Completion of all punch list items  
Submittal of all applicable Operating and Maintenance manuals to Using Agency.
  - (d) On-site training and education of facility maintenance and operating personnel in the functions, operations and maintenance of all equipment installed under the project.
  - (e) Commissioning of all major systems and equipment.
  - (f) Compliance with any change orders.
  - (g) Electrical inspection certificate, issued by State approved independent inspection company.
  - (h) Boiler inspection by Department of Labor, Licensing, and Regulation (if applicable).

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- (i) Detailed list of all installed and/or repaired equipment (required for lease financing).
- (j) Final acceptance of construction phase by DGS or Using Agency.
- (k) Comprehensive maintenance, for the term of the contract, of all installed equipment and systems, up to and including replacement of worn, failed, and doubtful components with new components of equal or superior quality. Emergency on-site service and component replacement must be provided on a 24-hour per day basis. Provide itemized list to include each unit of equipment and the applicable service schedule.
- (l) All necessary support services throughout the term of the contract, including, but not limited to, the following:
  - (i) Ongoing Measurement, Monitoring and Verification Services. (See section V).
  - (ii) Periodic on-site inspections to insure all mechanical, electrical and utility systems are operating as required and to assess the operational efficiencies of the systems and equipment installed.
  - (iii) Re-evaluation and upgrade of software, as newer versions become available.
  - (iv) Hourly, daily, weekly, monthly, quarterly and annual schedules of operations and maintenance tasks that must be performed.
- (m) Provision of an acceptable project financing plan to cover 100% of the costs of developing and implementing the approved comprehensive energy efficiency and guaranteed savings program.
- (n) The ESCO shall recover all costs of the feasibility study, engineering design, equipment procurement, installation, maintenance, training, support services and finance charges over the life of the contract. Payments by the Using Agency will be solely from the guaranteed cost avoidance and payments will never be greater than the actual cost avoidance generated.
- (o) The financing shall be severable from all other aspects of this project and is subject to the fiscal non-appropriation clause.
- (p) Conditions of Work and Job Site Visit
  - (i) Site Investigation: By submitting a Phase II Proposal, the ESCO acknowledges that it has investigated and satisfied itself as to the actual conditions affecting the work, including but not restricted to those bearing upon the physical conditions at the site, the formation and conditions on the ground, and the character of equipment and facilities prior to and during prosecution of the work.
  - (ii) Any failure of the Offeror to acquaint itself with the available information will not relieve it from responsibility for estimating properly the difficulty or cost of successfully performing the work. The State will not be responsible for any conclusions or interpretations made by the ESCO

## **SECTION IV- SCOPE OF WORK**

on the basis of information made available in this RFP.

### **D. Energy Savings Guarantee/Project Financing**

- 1) The ESCO shall provide an energy savings guarantee, whereby the ESCO guarantees that a certain level of energy and energy related operating and maintenance savings will accrue as result of implementing the approved comprehensive energy efficiency and guaranteed savings program, and that if the actual savings achieved is less than the guaranteed savings, the ESCO will reimburse the State an amount equal to the difference between the actual savings and the guaranteed savings.
- 2) Each ESCO shall provide a method of securing the energy savings to the State. The method will be determined by the State on a project by project basis, depending on the nature of the surety markets. If self-insured, the ESCO may provide an irrevocable letter of credit, payable to the State and issued by a solid financial institution, approved by the State. As an alternative, the ESCO shall provide, for a period mutually agreed to by the State and ESCO, a performance bond issued by a bonding agency, or an insurance policy issued by a reputable insurance company who has provided similar policies for similar projects, and are approved by the State. Insurance policies and bonds shall provide for direct payment of the shortfall amount to the State, as well as allow the State to file a claim against the surety instrument in effect.
- 3) Prior to the initiation of Phase II of each project, the ESCO shall provide an indexed rate of interest which reflects the cost of the financing to be provided by the ESCO. The effective rate of interest the ESCO proposes to charge for this contract will be determined and fixed on the funding date based on the index.
- 4) The State shall, at its sole option, determine whether or not to accept the financing offered by the ESCO or arrange an alternate means of financing. No payments by the State for the capital costs (design, construction, training and startup services) shall be made to the ESCO until 100% completion and acceptance of all ECM installations by the State. Payments by the State (including capital cost principal & interest cost of the guarantee, and maintenance costs) for the duration of the project, shall be solely from the guaranteed cost savings.

### **3. CAPACITY TO PERFORM WORK**

The successful ESCO shall maintain an adequate staff to provide the services required herein with the professional quality and timeliness required. Preferably, the same personnel shall be utilized for the duration of each project. Failure to maintain adequate staff or to provide staff replacements with personnel of equivalent quality and experience shall be cause for termination for default by the Procurement Officer. A Maryland certified mechanical engineer shall be assigned to each project, as a project manager.

### **4. SCHEDULE**

The State and the ESCO will mutually agree on the schedule for Phase I and Phase II for each assigned project. Failure of the ESCO to satisfactorily complete work assignments within the time specified may be cause for termination for default by Procurement Officer.

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### **5. PERFORMANCE EVALUATIONS**

- 1) The State of Maryland agencies utilizing this contract must submit a performance evaluation of the ESCOs at the end of Phase II for each contract awarded under the IDC.
- 2) The evaluation will consist of questions relative to the ESCO's performance on the contract. Survey responses will be used to calculate an overall score for each pre-qualified ESCO listed on the IDC contract.
- 3) Attachment I is a sample of the form (or general list of criteria) that may be used by the State to evaluate Contractor performance. The Contractor will be provided a copy of the State's evaluation of the Contractor's performance. If a conflict occurs, the State's Project Management Office (PMO) for the Contract will make the final determination. The performance evaluation will be used in evaluating future contracts awarded under this contract.

## SECTION V - PERFORMANCE MEASUREMENT AND VERIFICATION

### 1. GENERAL

#### A. Energy Reduction

It is expected that implementation of this program will result in a net reduction in energy consumption, comprising electricity, natural gas, fuel oil, water, and other utilities, in State owned facilities.

#### B. Cost Avoidance

It is expected that implementation of this program will result in guaranteed energy cost avoidance, sufficient to finance the cost of the program over the term of the contract.

### 2. STANDARDS

All measurement and verification procedures shall be consistent with the following documents:

A. International Performance Measurement and Verification Protocol, Vol. I (2007) and Vol. III Sec. II (2003), (IPMVP).

B. Federal Energy Management Program M&V Guidelines: Measurement and Verification for Federal Energy Projects, Ver. 3.0 (2008), (FEMP).

### 3. MEASUREMENT AND VERIFICATION (M&V) METHODOLOGY

#### A. Overview

- 1) Various M&V methodologies may be employed to document guarantee performance. Methodologies shall be as defined in the documents cited in Paragraph 2. above.
- 2) The ESCO, in consultation with the State, shall develop the appropriate M&V methodology or methodologies, during the technical feasibility study phase (Phase I). Each methodology or procedure must be approved by the State prior to implementation, and no substitutions will be permitted without explicit approval of the State.

#### B. M&V Plan and Methodology

- 1) The ESCO shall prepare and include, as a separate section of the final Phase I technical feasibility study, a detailed M&V plan. The plan shall indicate and describe the proposed IPMVP and/or FEMP methodology or methodologies, to be employed throughout the project, for baseline development and ongoing monitoring during the guarantee period. In accordance with Section IV, Paragraph B. 6), the State requires, unless otherwise directed, as part of the M&V Plan, installation of metering, instrumentation and related software, during Phase 1 for various purposes, including to verify existing equipment performance, to refine energy reduction estimates and guarantee cost avoidance, development of performance baselines, and ongoing monitoring during the guarantee period.
- 2) Prior to installation of metering, the ESCO shall prepare and present to the State

## SECTION V - PERFORMANCE MEASUREMENT AND VERIFICATION

for review and approval, a detailed metering plan. The plan shall clearly identify meter locations, measured parameters (temperature, flow rate, electrical power, etc.), units and frequency of measurements. In addition, the plan shall indicate proposed meter manufacturer(s), model number(s) and specification of instrument accuracy.

- 3) ESCO shall indicate details of energy and cost avoidance calculations. Details shall include formulas, constants, unit conversion factors, assumed or measured values and calculation algorithms.
- 4) The M&V plan shall be summarized in table format. In addition, accompanying documentation shall describe how each methodology is to be implemented.
- 5) For ECM specific methodologies, the following shall also be specified:
  - (a) FEMP Option A: Retrofit Isolation with Key Parameter Measurement
    - (i) Indicate parameter(s) and basis for stipulated performance methodology.
    - (ii) Stipulated measures are generally not preferable and must be specifically approved by the State.)
  - (b) FEMP Option B: Retrofit Isolation with All Parameter Measurement
    - (i) Indicate all parameters, which are to be measured, including units of measure, e.g.:
      - a) Power (watts, kilowatts)
      - b) Energy (watt-hours, kilowatt-hours, therms)
      - c) Temperature (oF, oC)
      - d) Flow rate (gallons per minute, cubic feet per minute)
    - (ii) Measurement frequency and duration, e.g.:
      - a) One-time
      - b) Interval (e.g., one each 15 minutes, 24 hours, 30 days)
      - c) Continuous
    - (iii) Measurement Method, e.g.:
      - a) Hand held instrument
      - b) Portable data logger
      - c) Field mounted instrument or data collection panel
    - (iv) Communications interface, e.g.:
      - a) Manually read
      - b) Telephone dialup
      - c) Wireless
      - d) Using Agency LAN
      - e) Web based
- 6) Where determined to be appropriate, FEMP Option C: Whole Building Utility Data Analysis, shall be employed. Option C is generally indicated when the following

## SECTION V - PERFORMANCE MEASUREMENT AND VERIFICATION

conditions are met:

- a) Savings are predicted to be greater than about 10% to 20% of the overall consumption measured by the utility or sub-meter.
- b) At least 12 and preferably 24 months or more of pre-installation data are used to calculate a baseline model.
- c) Adequate data on independent variables are available to generate an accurate baseline model, and procedures are in place to track the variables required for performance period models.

### 7) Performance Baseline

- a) Performance baseline (baseline) is defined as a detailed documentation of quantitative parameters and operating characteristics of a facility during a suitably chosen recent period, prior to implementation of any ECMs. Documented operating characteristics shall include, but not necessarily be limited to:
  - (i) Electric energy consumption, demand and cost
  - (ii) Natural gas and fuel oil consumption and cost
  - (iii) Water consumption and cost
  - (iv) Other utility consumption and cost
  - (v) Operating hours of heating, cooling and ventilating equipment
  - (vi) Operating hours of lighting systems
  - (vi) Facility occupancy levels
  - (viii) Facility square footage
  - (ix) Weather severity (heating and cooling degree days)
- b) The baseline period shall be chosen such that the nature, level and pattern of operations during the period are most representative of current operations, other than changes as a result of implementation of any ECMs. In the event of a significant lapse of time between project scope development (Phase I) and final completion (Phase II), the baseline period may be revised to correspond to a period ending just prior to implementation of any ECMs.
- c) The ESCO shall develop and include, in the final Phase I technical feasibility study, documentation and detailed descriptions of baseline performance. Documentation shall indicate and describe the proposed IPMVP 2001 and/or FEMP methodology or methodologies, to be employed throughout the project, for initial baseline development, as well as on-going monitoring during the guarantee period.
- d) During the guarantee monitoring period, the ESCO may adjust the baseline, as required, to account for changes in facility operational characteristics which occur after the original baseline is established.
- e) Baseline units and cost shall be developed and presented in a format

## SECTION V - PERFORMANCE MEASUREMENT AND VERIFICATION

consistent with applicable utility tariffs and rates (see Subparagraph 9) below).

### 8) Sampling Plan

- a) For certain ECMs, which encompass multiple units of a similar equipment type, and monitored through FEMP Option A or B, the ESCO may elect to perform measurements of a statistical random sample selected from the population, for the purpose of establishing baseline or guarantee performance.
- b) Prior to performing measurements, the ESCO shall prepare a detailed sampling plan, indicating sample size and measurement locations. The sampling plan must be carefully designed, based on recognized statistical techniques, in accordance with procedures set forth in FEMP M&V Guidelines: Measurement and Verification for Federal Energy Projects, Ver. 3.0, Appendix B. Prior to implementation, the Sampling Plan must be submitted to the State for review and approval.

### 9) Energy Rates

- a) Unless explicitly approved by the State, all performance results (baseline and guarantee period) shall be based on costs determined through application of applicable utility rate tariffs and schedules to energy units. Electricity costs and cost avoidance, in particular, must be based on the application of time-of-use (TOU) energy rates, where in effect, and separate demand rates, to energy and demand units, respectively. Where tiered rate schedules apply, costs shall be determined through application of specific charges to energy units in each rate tier. In addition, the application of rate schedules shall include an explicit itemization of fixed charges, such as customer charges, minimum charges, and all applicable surcharges.
- b) The ESCO shall include, in the final Phase I technical feasibility study, applicable baseline energy rates and/or utility rate schedules, for each energy type. Where utility rate schedules are not available (e.g., fuel oil rates), the ESCO shall include documentation, supporting the baseline rate.
- c) Where utilities are provided on a deregulated basis, the ESCO shall include separate schedules for commodity and distribution components. DGS will make available current de-regulated commodity rates.

### 10) Energy and Cost Avoidance Calculation

- a) Energy units avoidance during any period shall be calculated as the difference between baseline units consumed, adjusted for variation in weather severity and operational characteristics, as described in Subparagraph 7) (a), and actual units consumed, during the period.
- b) Energy cost avoidance during any period shall be presented using a baseline vs. post retrofit utility bill model. Cost avoidance shall be calculated as the difference between baseline energy cost and actual cost, during the period. Baseline cost shall be calculated using baseline units, adjusted for variation in weather severity and operational characteristics, as described in Subparagraph

## SECTION V - PERFORMANCE MEASUREMENT AND VERIFICATION

7) (a), and applying actual utility or energy supplier rates, as described in Subparagraph 9). Actual cost shall be determined from utility and supplier invoices. Unless explicitly approved by the State, cost avoidance calculated with blended unit rates will not be acceptable.

### 11) Applicable Energy Rates

- a) For measures which achieve cost avoidance through energy unit reduction, applicable rates shall be baseline rates or current rates, whichever result in the greater baseline cost.
- b) (b) For measures which achieve cost avoidance through energy rate reduction (e.g., fuel switch or tariff switch), guaranteed cost avoidance shall be calculated by applying the contract rate differential to baseline and actual energy units. Contract rate differential is defined as the difference between the energy rate of the baseline energy source and converted energy source, negotiated by the State and ESCO. Actual avoided cost shall be calculated using the current rate differential. Subject to the contract rate differential, the ESCO shall assume all risk of any deviation between actual and guaranteed cost avoidance, due to swings in rate differential.

### 12) Reconciliation of Actual vs. Guaranteed Savings

- (a) The guarantee monitoring period shall commence on the date of final payment to the ESCO, following 100% completion of work, and shall continue for the term specified.
- (b) At the end of each year following completion of the ECM installation, ESCO shall provide documentation verifying actual energy use, operating conditions and cost avoidance, as defined in Subparagraph (10).
- (c) If the actual cost avoidance is greater than the ESCO's guaranteed cost avoidance, then the State shall retain the difference.
- (d) If the actual cost avoidance is less than the guaranteed cost avoidance, the ESCO shall refund the difference to the State. The ESCO shall submit documentation verifying temperature set points, operating hours or other parameters stipulated in the Phase 2 proposal. If a deviation from Phase 2 proposal parameters by the State has resulted in lower than expected cost avoidance, then the amount due to the State may be reduced by the difference between the expected cost avoidance and actual cost avoidance.
- (e) Any payment due the State shall be made within 60 days of the yearly anniversary date of the completion of the ECM installation. Failure to submit payment during this time frame may result in the State filing a surety claim against the ESCO for the amount due.
- (f) The State will not permit any provisions allowing excess cost avoidance during any annual monitoring period to be carried over to any future (or past) year, to offset future (or past) cost avoidance shortfalls. Each monitoring year following completion of ECM installation is to be evaluated and

## SECTION V - PERFORMANCE MEASUREMENT AND VERIFICATION

reconciled on a stand-alone basis.

- (g) The State will not allow any provisions allowing cost avoidance realized during the ECM installation period (construction period) to be applied toward the guarantee cost avoidance.

### 4. PRODUCTS AND SPECIAL SERVICES

#### A. Energy Accounting Software

1. If FEMP Option C methodology is employed, the ESCO shall provide and use State approved, third-party commercially available energy accounting software. Such software shall accommodate a detailed inventory of energy records and shall employ linear regression analysis to model baseline performance, incorporating changes in weather severity, and other operational variations.
2. The State may direct the ESCO to include in the project cost, purchase of one or more licenses as directed by the State, on a project by project basis, of any energy accounting software, including training and product support.

#### B. Internet Data Acquisition

1. The State may direct the ESCO to include in the project scope, provision of an Internet based facility energy monitoring service, including setup, training and product support, as the State may require.
2. The Internet monitoring service shall support interval storage and retrieval of utility and energy data, up to and including real time data, which will permit calculation of an approximate monthly bill, for a given utility, and creation of usage trend reports.

#### C. Instrumentation

##### 1) Electric Power and Energy

- (a) All devices employed to meter electric power use shall be capable of metering continuous RMS voltage, current, power and power factor at accuracy within +/- 1.0% of actual value, over the entire load range.
- (b) Metering of polyphase loads shall include independent measurement of each phase.
- (c) All devices employed to meter electric power for continuous monitoring (i.e., other than spot measurement) shall be minimally capable of storing data in 15 minute intervals, for a minimum of 30 days.
- (d) Where required, due to voltage levels, the ESCO shall employ potential transformers.

##### 2) Temperature

- (a) All devices employed to meter temperature of liquid media shall have accuracy within +/- 0.1 F ° of actual value, or better.

## **SECTION V - PERFORMANCE MEASUREMENT AND VERIFICATION**

- (b) Surface mounted sensors such as strap on types may not be used for the purpose of verifying baseline or guarantee period performance, unless specifically approved by the State. Preferred sensors shall be suitable insertion type.
  - (c) Primary devices used for the purpose of providing information to a control system or energy information system, shall be provided with a calibration certificate.
- 3) Pressure
- a) All pressure sensing devices shall have accuracy within +/- 1% of full scale.
  - b) Primary devices used for the purpose of providing information to a control system or energy information system, shall be provided with a calibration certificate.
- 4) Flow Rate
- a) All devices employed to meter flow rate of liquid media shall have accuracy within +/- 1.0 % of actual flow or better.
  - b) Approved flow metering devices shall include orifice, venturi, turbine or ultrasonic types.
  - c) Flow rates determined from equipment manufacturers' specifications or performance curves (including pump curves) or operating equipment pressure differential will not be acceptable for the purpose of verifying baseline or guarantee period performance.
  - d) Flow rates in constant volume flow systems shall be verified, using approved instrumentation, as defined in this Subparagraph 4. C. 4, as average rate over a minimum continuous period of 30 minutes.
  - e) Flow rates in variable volume flow systems shall be verified, using approved instrumentation, as in this Subparagraph 4. C. 4, by continuous measurement throughout the monitoring period.

## **5. COMMISSIONING**

- A) Prior to final acceptance by the State, the ESCO shall demonstrate to the satisfaction of the State that all components, systems, and processes required to fully verify guaranteed cost avoidance, are complete and properly functioning.
- B) Prior to final acceptance by the State, the ESCO shall submit to the State for approval, a Commissioning plan. The plan shall include a detailed specification of all procedures, including preliminary check-out and functional performance testing, which must be executed to demonstrate and verify proper data collection, processing, communication, and report preparation capability.
- C) The ESCO shall prepare and submit to the State for approval, detailed documentation of all conditions, requirements and the results of all final inspections and functional performance tests.

## SECTION V - PERFORMANCE MEASUREMENT AND VERIFICATION

- D) The State shall be notified in advance, of the schedule of any final inspections and functional performance tests.
- E) Throughout the baseline and guarantee performance periods, ESCO shall conduct regular inspections and maintenance to insure that all instrument accuracy remains within acceptable tolerances. Guarantee performance shall not be harmed nor the State inconvenienced, due to faulty or unreliable instrumentation. The State, at its discretion, may require ESCO to repair or replace any parts, material or software, deemed faulty or unreliable.

### 6. ENERGY AND COST AVOIDANCE REPORTS

- A. The ESCO shall provide a detailed report of energy and cost avoidance performance, at least once a year. During years one through three of the guarantee performance period, or as directed by the State, ESCO will provide informal semi-annual performance updates.
- B. Reports shall clearly indicate energy baselines, monitoring period energy usage, applicable rates and any adjustments to energy and cost baselines.
- C. Results shall be compiled into an integrated report and presented by the ESCO in person, at a time and location acceptable to the State. In-person ESCO representatives must include:
  - 1) M&V specialist with principal responsibility for report preparation
  - 2) Lead service technician assigned to the project
  - 3) Operations manager assigned to the project or relevant region or business sector under which the project falls
  - 4) Principal account executive assigned to the project
- D. Though the State may request an advance report for review, note that "mail in" reconciliation reports will not be acceptable. The State reserves the right to edit and revise the format and presentation of any reports, including ESCO standardized reports, to conform to a format more acceptable to the State.
- E. All reports shall conform to the format agreed to by the ESCO and the State. ESCO shall include detailed documentation, verifying results presented. Report formats shall be such that the State can easily confirm the logic, formulas, and calculation algorithms, in order to independently validate performance results. Reports shall be provided in hard copy and electronic media format. Electronic format shall include spreadsheets, database files, text documents and portable data files (pdf) and shall be made available in portable media format designated by the State. All calculations, documentation and analysis supporting baseline and final performance results shall be included.

## **SECTION VI – ESCO QUALIFICATIONS CONTENTS OF TECHNICAL PROPOSAL**

### **1. INTRODUCTION**

This section defines the minimum material and documentation to be submitted in the Offeror's Technical Proposal. Submissions should be carefully organized in the same order as the RFP and clearly provide the information required. Clarity and conciseness are important. Technical proposals shall be classified as being either reasonably or not reasonably susceptible for award. The Technical Proposal shall consist of an original and five (5) copies of each of the following documents:

### **2. OFFEROR'S QUALIFICATIONS**

Offerors are encouraged to submit sufficient graphic, narrative, and documentary material required to clearly demonstrate qualifications, financial responsibility, and performance capability of the Offeror's team. Qualification data will include the following:

#### **A. Team Qualification:**

Submit an organizational chart that clearly shows the responsibility and interrelationship of all key team members of the project team, including all sub-consultants and subcontractor firms. All sub-consultants and subcontractors shall be contracted directly to the Offeror. Submit qualifications and experience for the engineering design team firms and the proposed individuals and resumes and business references for the Offeror. Provide resumes for key project managers, energy engineers, design engineers (mechanical, Electrical, Structural, etc), construction managers, and operations managers, and Maintenance personnel. The Project Manager, Mechanical Engineer, Electrical Engineer and Structural Engineer must all be registered engineers in the State of Maryland at the time of proposal submittal. Designated project managers must have experience on similar size and types of projects. If identified individuals or associated firms are changed by the successful Offeror for a specific assigned project, Offeror must submit request for change to the State. The State reserves the right to reject the requested replacement. Describe how work assignments are made and how the team will be affected by additional EPC projects whether they be State or local government projects. The Offeror should present their ability to develop project tracking and reporting documents for submittals, requests for information and proposals/change orders. Therefore, offerors must include resumes that indicate qualifications of in-house staff or consultants proposed for scheduling responsibilities and tools/systems/software to be used for implementation of the scheduling effort.

All information presented should clearly demonstrate the ability of the ESCO to successfully execute energy performance projects, including analysis, engineering, construction, maintenance, and measuring and verification of energy savings.

#### **B. Prior Project Experience:**

## **SECTION VI – ESCO QUALIFICATIONS CONTENTS OF TECHNICAL PROPOSAL**

Describe the offeror's energy performance contracting (EPC) experience in both the public and private sector with emphasis on State and local governmental projects with a maximum of 15 year payback. Greater consideration shall be given to Offerors with experience in prime management of EPC's with capital costs of at least \$1,000,000. List five (5) projects within the past five years, where the construction phase is completed, indicating experience in the development, construction and implementation of comprehensive energy efficiency and guaranteed savings programs and proposed versus actual completion duration. Explain variances. Complete the form included in Appendix 1 for each reference. Failure to fully complete the form may render your proposal not reasonably susceptible of being selected for award.

1) Sample Detailed Engineering Feasibility Study

Include one detailed engineering feasibility study conducted by the Offeror's project team on a similar energy conservation project, funded by energy savings. Clearly mark "Sample Detailed Technical Study" on the cover with your firm's name. The study must include detailed energy and economic calculations, preliminary design and specifications, narrative clearly indicating scope of work. Study should be submitted for project where construction has been completed.

2) Green Building and Sustainable Design Experience:

Describe offeror's experience with the analysis, design, construction, and operation of geothermal heat pump system, solar energy, fuel cells, or other renewable energy resources. Describe in detail previous projects where these technologies were evaluated even if they were not implemented. If studied and not implemented explain why. Greater consideration shall be given to Offerors with experience in offering creative and cutting edge technology for evaluation and inclusion in projects. All ESCO's must examine renewables for all State projects as part of the Phase I study.

3) Past Performance:

The State will consider the Offeror's past performance on energy performance projects with Maryland State Agencies, or other municipalities. Ability to properly assess facilities loads, adherence to schedule, engineering, operability of installed systems, timely delivery of services and achievement of energy guarantee, creativity of Phase I study and project development, use of new or renewable technologies, compliance with IDC, ability to properly price a project, and timely response to any shortfall in guaranteed savings will all be considered.

4) List of all ECMs:

Provide Offeror's comprehensive check list of all possible ECMs.

**SECTION VI – ESCO QUALIFICATIONS  
CONTENTS OF TECHNICAL PROPOSAL**

C. Technical and Managerial Approach:

1) Construction Schedule:

The Offeror must clearly demonstrate knowledge and means of proper scheduling and planning practices in accordance with the scheduling requirements of the General Conditions, Offeror's submission of a Critical Path Method (CPM) construction schedule that clearly indicates from the estimated start of construction the duration of the major elements of the project and how they interface sequentially. Describe Offeror's proactive management of the project's schedule and ability to recover from delays. Provide actual CPM schedule that was developed for one of the five (5) reference projects.

2) Project Management:

Describe Offeror's approach to managing the entire project and qualifications of project managers during the development and construction phases, including interface with sub-consultants and subcontractors, development of a comprehensive plan, detailed design, procurement, construction, training, punch lists and start-up. Identify site members of the project team who will be responsible for the various stages of design and implementation. Describe the various responsibilities and coordination of the team members, as well as the Using Agency, facility, DGS personnel and MEA, to ensure an effective and timely completion of both Phase I and Phase II of a project.

3) Development of Project Scope:

To demonstrate expertise in identifying energy conservation measures, provide the methodology involved in the preparation of a typical detailed engineering feasibility study, and development of preliminary plans and specifications in order for the State to proceed with the approval and implementation of the facility energy efficiency program. This shall include but not be limited to site investigation, analysis of the existing HVAC, and or steam or chilled water systems in their entirety including but not limited to existing distribution systems, operations and utility costs which may be supported with measured data, fuel switching, load calculations, current system operation practices, and maintenance. The State is paying for expert advice and analysis and fully expects to receive this expertise in the form of a comprehensive energy audit and Phase II proposal. Oversights or omissions of existing conditions, systems or equipment, and/or operating routines, will not be acceptable

4) Owner Training:

Provide detailed information on the training and education programs

available for facility operating and maintenance personnel, including course content, location, schedule, hours, and types of trainees that are included.

**SECTION VI – ESCO QUALIFICATIONS  
CONTENTS OF TECHNICAL PRPOSAL**

D. Financial Approach:

1) Procurement:

Describe the proposed method of procurement of all major types of equipment and services, including those subcontracted, and the pricing policy that will be applied to provide a competitive cost environment throughout a project.

2) Financing:

Describe the sources of the funds to be acquired by the Offeror and applied to implement a project. The project financing must be directly from the Offeror to the State. Indicate the Offeror's prior use and experience with this method of financing. This section should include the acknowledgment that the State may choose to finance all or part of the funds necessary to implement this project through its own sources.

3) Energy Savings Guarantee:

Provide terms, conditions, exclusions, insurers name and source of cost savings performance guarantee including provisions for payment due to the State in the event guaranteed savings exceed actual savings. Offeror shall provide sample policy proposed for use in this project, and if self-insured, provide a complete description of how insurance is funded. Offeror shall obtain insurance or bond that will remain in effect for the term of the Contract to guarantee savings in the event the Offeror is unable or unwilling to pay any difference between actual cost savings and guaranteed savings. Policy/bond must be written such that the State is listed as an additionally insured entity which will provide the State with the ability to make a claim against the bond/policy.

4) Owner Training:

Indicate Offeror's approach to monitoring the actual energy savings associated with the project. Provide sample energy savings calculation documents which will become an attachment to the guaranteed energy savings contract. Describe the methodology, measurement, and monitoring format of actual energy savings. Also, describe the process used to adjust the energy consumption baseline throughout the contract period.

**3. FINANCIAL AND LEGAL CAPABILITY**

Financial Status

1) Financial Statement:

**SECTION VI – ESCO QUALIFICATIONS  
CONTENTS OF TECHNICAL PROPOSAL**

Offerors must demonstrate the financial soundness of their firm by submitting a certified Financial Statement from a Bank and/ or Dunn & Bradstreet.

2) Legal Proceedings:

List all legal or administrative proceedings involving your firm currently pending or concluded adversely within the last five years which related to procurement or performance of any public or private contracts. In addition to the information requested, the case name and docket number, as well as the issues in the case, should be provided.

3) Performance Bond or Insurance:

List the name of the agent or bonding/insurance company that will be providing the bond/policy for the guarantee. List current bonding/ insurance capacity and maximum length of term for bond/ policy.

**SECTION VII – ESCO QUALIFICATIONS  
PROPOSAL EVALUATION AND BASIS OF AWARD**

**1. CRITERIA FOR PROPOSAL EVALUATION**

The technical evaluation criteria that will be used by the Evaluation Committee for each Technical Proposal are those listed in descending order of importance. A transmittal letter must accompany the technical proposal. The purpose of this letter is to transmit the proposal and acknowledge the receipt of any addenda. The transmittal letter should be brief and signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP. Only one transmittal letter is needed and it does not need to be bound with the technical proposal.

The criterion is as follows:

- A) Team Qualifications
- B) Prior Project Experience
  - 1. Sample Detailed Engineering Feasibility Study
  - 2. Green Building and Sustainable Design Experience
  - 3. Past Performance
- C) Technical and Managerial Approach
  - 1. Construction Schedule
  - 2. Scheduling and Planning Practices
  - 3. Project Management
  - 4. Development for Project Scope
  - 5. Owner Training
- D) Financial Approach
  - 1. Procurement
  - 2. Financing
  - 3. Energy Savings Guarantee
  - 4. Savings Monitoring and Verification
- E) Financial Status
  - 1. Financial Statement
  - 2. Legal Proceedings
  - 3. Performance Bond or Insurance

**2. SELECTION**

The Evaluation Committee will make recommendations to the Procurement Officer for the IDC contract to the responsible ESCOs whose proposals are determined to be the most advantageous to the State, considering the factors listed in item (1) above. The Evaluation Committee will select a maximum of (8) qualified respondents based on the highest ranked firms. Proposals will only be scored once by the Evaluation Committee, unless oral presentations are required. If oral presentations are conducted, the Evaluation Committee may conduct a final scoring upon completion of the oral presentations.

## **SECTION VII - PROPOSAL EVALUATION AND BASIS OF AWARD**

Recommended contract awards, if any, resulting from this RFP are subject to appropriate State approvals.

### **3. ORAL PRESENTATION**

At the discretion of the Evaluation Committee, an oral presentation may be required for this solicitation. The oral presentation, if held, will be considered to be part of the offeror's technical proposal. Eligible firms will be notified of time and date. If necessary, separate instructions regarding the conduct of oral presentations will be issued.

**APPENDIX 7**

**Reference Information Sheet**

**CLIENT NAME:**

**DATES OF SERVICE:**

**SCOPE OF WORK: (LIST MAJOR EQUIPMENT REPLACEMENTS FIRST)**

**TOTAL COST OF PROJECT:**

**TOTAL COST OF EQUIPMENT AND LABOR TO INSTALL:**

**FINANCED AMOUNT:**

**SOURCE OF FINANCING:**

**TERM IN YEARS:**

**INDICATE IF BOND, INSURANCE OR IRREVOCABLE LETTER OF CREDIT WAS ISSUED AND THE COST:**

**M&V PROTOCOL (LIST PERCENTAGE OF SAVINGS ATTRIBUTABLE TO EACH M&V PROTOCOL):**

**NAME, ADDRESS AND TELEPHONE NUMBER OF CURRENT CONTACT PERSON:**

<b>Year</b>	<b>Baseline Energy (\$and units energy consumption)</b>	<b>Guaranteed Saving (\$and units of energy)</b>	<b>Actual Savings (\$and units of energy)</b>

**APPENDIX 7**

**MARYLAND  
DEPARTMENT OF HUMAN RESOURCES  
HIRING AGREEMENT**

This agreement (“Agreement”) is made and entered into by and between the Maryland Department of Human Resources (hereinafter referred to as DHR) and \_\_\_\_\_ (hereinafter referred to as the CONTRACTOR). This “Agreement” has been developed pursuant to **Section 13-224, State Finance and Procurement Article, Annotated Code of Maryland**. This “Agreement” will be carried out by DHR and the Local Department (s) of Social Services (hereinafter referred to as the LOCAL DEPARTMENT) and the CONTRACTOR cognizant in support of contract number \_\_\_\_\_ (“Procurement Contract”).

**WITNESSETH:**

WHEREAS, the CONTRACTOR, DHR, and the LOCAL DEPARTMENT, when appropriate, have met and reviewed an inventory of job openings that exists or the CONTRACTOR is likely to fill during the term of the “Procurement Contract” at its various locations in the State of Maryland;

WHEREAS, the CONTRACTOR, DHR and the LOCAL DEPARTMENT, when appropriate, have met and reviewed the job descriptions, locations, and skill requirements for those positions;

WHEREAS, DHR and the LOCAL DEPARTMENT, when appropriate have identified and discussed with the CONTRACTOR the following services that DHR and the LOCAL DEPARTMENT can provide to the CONTRACTOR for its Workforce related needs:

## APPENDIX 7

Medicaid coverage for the employee and the employee's dependents for up to one year after placement in the job;

Maryland Children's Health Program (MCHP) medical coverage for the employee's dependents after one year of employment for as long as eligibility is met;

Food Stamps for the employee and the employee's dependents for as long as eligibility requirements are met;

Child Care subsidies for the employee's dependents for up to one year after employment as long as eligibility requirements are met;

Transportation subsidies for the employee for a period of time after employment;

Other Retention services including counseling on an as needed basis; and

Assistance with claiming tax credits for having hired Temporary Cash Assistance customers;

NOW THEREFORE, the CONTRACTOR and DHR agree to work cooperatively to develop responses to the workforce development requirements faced by the CONTRACTOR in the State of Maryland and to promote the hiring of DHR Temporary Cash Assistance customers by the CONTRACTOR.

Specifically, they agree as follows:

A. That the CONTRACTOR will:

1. Notify DHR of all job openings that exists or result from the "Procurement Contract" that the CONTRACTOR may have with an agency of the State of Maryland;

## APPENDIX 7

2. Declare DHR and the LOCAL DEPARTMENT the “first source” in identifying and hiring candidates for those openings;
3. Work with DHR and the LOCAL DEPARTMENT, as necessary and appropriate, to develop customized training programs which enable Temporary Cash Assistance customers to qualify for and secure the jobs;
4. Give preference and first consideration (to the extent permitted by law and given any existent labor agreements) to candidates the LOCAL DEPARTMENT refers, within three (3) working days to fill job openings, provided the candidates meet the qualifications specified;
5. Agree to consider filling a minimum of \_\_\_\_ of the job openings with LOCAL DEPARTMENT referred candidates, provided that the LOCAL DEPARTMENT refers qualified candidates within three (3) working days;
6. Provide the LOCAL DEPARTMENT with feedback regarding the disposition of all LOCAL DEPARTMENT referrals, to include an explanation of why any such candidate was not hired or considered qualified;
7. Provide the LOCAL DEPARTMENT with feedback regarding the progress and employment status of those candidates who are hired; and
8. Designate a specific contact person who will:
  - provide additional information regarding “first source” jobs and clarify their requirements,
  - receive LOCAL DEPARTMENT referrals, and

## APPENDIX 7

- provide feedback to a LOCAL DEPARTMENT account representative upon request regarding the dispositions of those referrals as well as the progress/employment status of those candidates hired by the CONTRACTOR.
8. That DHR and the LOCAL DEPARTMENT will designate account representatives who will:
1. Process all the CONTRACTOR'S job notices in accordance with this "Agreement";
  2. Refer screened and qualified candidates to the CONTRACTOR'S designated contact person;
  3. Make referral in a timely manner, that is, within three (3) working days after receiving the CONTRACTOR'S job opening notices;
  4. Assist in the development of any mutually agreed upon customized training and/or internship programs that will better prepare LOCAL DEPARTMENT candidates for employment with the CONTRACTOR;
  5. Provide follow-up and post hire transitional/supportive services, (e.g. Medicaid, MCHP, Food Stamps, child care, transportation, retention counseling, and access to tax credits) as necessary and appropriate;
  6. Insure that the CONTRACTOR is advised of available subsidies and is assisted with the associated application/claiming processes; and

## APPENDIX 7

7. Report the CONTRACTOR to the cognizant State Procurement Agency if the CONTRACTOR does not fulfill its responsibilities as listed in Section A. of this "Agreement";
8. Review and evaluate the effectiveness of this undertaking with the CONTRACTOR and make modifications as necessary and appropriate.

## APPENDIX 7

### **DISCLAIMERS:**

Nothing in this "Agreement" shall cause the CONTRACTOR, except as explicitly provided in Section A above, to alter existing hiring practices or to hire an individual into a position for which he/she is not qualified.

### **NON-DISCRIMINATION:**

DHR and the CONTRACTOR agree that there shall be no discrimination against any employee or candidate for employment because of race, color, sex, religion, national origin, age, sexual preference, disability or any other factor specified in Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1983 and subsequent amendments and that they will comply with all other pertinent federal and State laws regarding discrimination.

## **MARYLAND LAW PREVAILS**

The place of performance of this Contract shall be the State of Maryland. This Contract shall be construed, interpreted, and enforced according to the laws and regulations of the State of Maryland, including approval of the Board of Public Works where appropriate.

### **EFFECTIVE DATE:**

This "Agreement" shall take effect on the date of the aforementioned "Procurement Contract"; and it shall remain in effect for the duration of the "Procurement Contract".

APPENDIX 7

IN WITNESS, WHEREOF, the CONTRACTOR and DHR have affixed their signatures below:

**FOR THE  
CONTRACTOR**

**FOR THE  
DEPARTMENT OF  
HUMAN RESOURCES**

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**TITLE**

\_\_\_\_\_  
**TITLE**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**DATE**

**Approved as to form and Legal Sufficiency by the  
DHR Attorney General's Office**